COMMITTEE WORKSHOP

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Future of Energy Efficiency,)
Public Benefits Programs)
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HEARING ROOM A

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

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10:08 A. M.

Reported by:
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I N D E X

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P R O C E E D I N G S

10:10 a.m.

PRESIDING MEMBER LAURIE: Ladies and gentlemen, good morning. Continued workshop on legislatively mandated report to the Legislature on 1105. My name is Robert Laurie, Commissioner at the Energy Commission and Presiding Member of the Energy Efficiency Committee. To my left is my Associate on the Committee, Commissioner Robert Pernell.

The issues to be discussed today are budgets and administration. It is important for us to have you not simply respond to thoughts promoted by the Commission, but rather your own thoughts. And the positions of your various agencies and entities so that we know what you all are thinking.

We're ready to proceed. Commissioner Pernell, do you have any opening comments this morning?

COMMISSIONER PERNELL: No comments, just welcome, everyone, and good morning.

PRESIDING MEMBER LAURIE: Thank you.

Mr. Sugar.

MR. SUGAR: Thank you for coming. This

is another in our continuing series of public events and input for our report. Staff is committed to completing a draft of the public goods charge report in very early November.

The next event following this is a hearing to discuss the draft report, and that's going to be November 16th. I've gotten that date wrong a couple of times. It will be the 16th of November.

Following that there will be a Committee report going to the Energy Commission in very early December, so that the final goes to the Legislature at the beginning of the new year.

Staff has a couple of presentations today. The first would be Mike Messenger discussing proposed funding levels. The second will be Michael Sloss talking about administrative structure.

In the administrative structure area staff is putting forward a proposal. We're hoping that this will help elicit comments. We're also hoping that people put forward their own proposals, an explanation of the rationale behind them. That will help us understand better what the options are, what are the advantages and disadvantages of the various options are.

And with that, Mike Messenger.

PRESIDING MEMBER LAURIE: Any procedural questions? Okay, thank you.

MR. MESSENGER: I'll start with a procedural question. How many people have had a chance to read either of the two funding papers? One is just a review of historical trends and the other is a review of the factors that we used to come up with the funding recommendation. Could you just raise your hands if you've read either of those papers? That give me an idea.

Okay. What I'm up here to do is just to summarize briefly the historical paper. If you have questions, please hold them till the end of the presentation. We're going to have three separate presentations so you should be able to just jump in really quickly.

What we're doing today is looking at both the need and the funding levels for future energy efficiency programs, myself and Bruce Ceniceros. And he's going to be the tag team in just a second.

First, I'm going to briefly go through the historical trends. And that's really just to give some grounding to the Committee and people who haven't necessarily been aficionados in this area about how much money has been spent over the last ten years and on what types of things.

Next Bruce is going to talk about, you know, is there a continuing need for energy efficiency programs or not. What our preliminary analysis has shown.

And finally I'm going to come up with a review of funding levels analysis, basically tell you where we are preliminarily in terms of recommending a funding range. And then ask you what you think in terms of what should be the funding for this program, or how we should go about deriving a funding level.

First, this is just a graph of energy efficiency programs, both natural gas and electric. And as you can see, probably the low point starting in 1988 at about $112 million. Collaborative starts in 1989 and 1990. The money goes up to about $352 million at peak.

I should say something important about this. This excludes load management programs funding. And it also excludes low income energy efficiency programs. So this is just sort of the pure energy efficiency programs. Low income is being funded out of a separate charge now in the Legislature, and load management programs are a subject of controversy in terms of whether they should be additional funding for load management in the future.

Right now there is none authorized at the PUC. So we're looking for input about whether you think we should fund load management type programs or demand responsiveness type programs in the future.

MR. ABELSON: Mike, just a question on the chart. Are those nominal dollars or are those inflation-adjusted dollars?

MR. MESSENGER: Nominal dollars.

This is, again, all these charts are in the paper. This is just expenditures by program type. The CEC keeps a database and we just take from the utilities annual reports.

As you can see, there was a growth, the same kind of growth that we saw in the last chart. The biggest chunk is nonresidential. It's often between 30 and 50 percent of program funding actual.

The next biggest chunk is usually

residential. As you can see there's sort of resurgence of new construction and then a dying off by the end of this period, or a sloping down. And MA&E, there's a big chunk of MA&E expenditures, between 92 and 94 as the protocols were being developed and a lot of load impact analysis. And that's fallen off in recent years.

And here's just a look by fuel type and by administrator. This is for electricity. PG&E tends to be about 50 percent of the state. SoCal Edison between 20 and 30 percent. And the remainder for San Diego Gas and Electric.

And you can see all of these patterns are -- they pretty much track, you know, the utilities go up and down in unison. There doesn't seem to be any sort of out-lyers, you know, PG&E's funding going up and San Diego's going down. It seems like there's a general trend. It's what you expect because they're all administered by the same body, the PUC.

Here's an interesting chart. This is natural gas programs over time. And here there was sort of a disproportionate response between 92 and 94; the funding was increasing more for SoCal Gas at a faster rate than these other two programs in response to the collaborative, you know.

Perhaps you can look at it as they were more responsive to the potential for incentives earnings than the other companies, or maybe they just didn't, all of a sudden there was more potential discovered. I'm not sure what the reasons behind that, but it's just an interesting historical fact.

And finally, this is sort of the pocketbook question, you know. When I try to talk to people on the street about what I do and the kind of programs I look over, they say, well, how much does this cost me.

And on average it's cost people about 1 percent of their bills over the last decade to fund these programs. The low is about .5 percent, half of 1 percent in 1988. Right now it's a little bit less than 1 percent in terms of actual. Between 97 and 98 there's a little bit of a counting thing because we're tracking program year spending. And even though a lot of the 97 spending actually occurred in 98, it's tracked back to the 97 program year because that's the way the PUC was keeping accounts.

Post 1998 the accounting system changed.

And if I were to talk to you about 99 you'd see that there'd be a rebound back up. So that's just sort of a weird end effect that had to do with a change in accounting systems about how commitments were carried over.

But as you can see, electricity is about .9 percent of annual bills, and gas is about .6 percent in 1998. And we don't have updated figures on 1999, but we can get those together, maybe later.

So at that point I'm just going to pause. That's really sort of a quick whirlwind summary of this historical funding paper. I'm sure that people are probably more interested in the proposed levels, so I didn't spend much time.

Are there any questions on that? If not, I'm just going to hand it off to Bruce. Will.

MR. NELSON: Just one. There appears to be a paucity of data for the municipal public board controlled funds programs, a paucity of data for the muni public board funds. One, why is there a lack of data? Two, strongly recommend that such data be included in any legislative report.

MR. MESSENGER: Okay, that's a good question.

The municipals are not required to report expenditure data to the Energy Commission. Occasionally in the past we've asked for it and they've given it to us nicely. Post restructuring it's been a little bit more difficult to get that data. But I think we could -- if it was an important thing, and I'll talk about it with the Committee, then we could try again, I think, to ask for it.

But there's a lot of definitional questions about when you run programs at the municipal area what's an energy efficiency program, and what's a load income program, and that kind of thing. It's not as clear as the PUC, so I think that's maybe part of the hesitancy to report that data. But I can look into it.

MR. VINE: Mike, this may relate to some of the discussion that goes on later, but do you have any information on how these previous funding levels were set?

I know you looked at the data in the past and you were able to report what has been sent. But how were those levels set? Were they related, for example, to anything regarding the potential of energy savings in the state?

MR. MESSENGER: Well, you've asked me to do something that I don't think is possible, except in the level of opinion. So, I'll give it to you.

First of all, factually what happens is the funding levels are set by the PUC over the last ten years in sometimes annual, sometimes it's every two, and sometimes every three year rate cases, depending on the particular year.

What's tended to happen in those processes is that utilities have a preplanning process where they get input from the public on funding levels and programs and program designs. They come in and present a level to the Commission. Sometimes parties come in and argue for increases or decreases off of that baseline funding level and then the Commission makes a decision.

I don't believe the Commission's decisions have ever been rooted in any sort of firm kind of metric like we judge that there's 30 gigawatt hours more potential left, therefore you're going to get another $20 million.

I think what they figure is they try to balance a variety of different factors, including the potential for future savings as well as a variety of other concerns brought into the hearing process and reach a level.

It's much more of a negotiating process. I don't think it's a strongly analytically driven process in terms of the actual level of funding. I think more the analysis focuses on are the programs cost effective and are the programs well designed.

So that would be my answer.

Any other questions? If not, I'd turn it over to Bruce. Thank you.

Oh, by the way, one other thing I should say. All of the actual data, we print out an appendices, so if anyone really wants to comb through this data we have lots of extra copies of the data that underlies those graphs. And I'll put that at the back table.

Go ahead, Bruce.

MR. CENICEROS: Okay. I'm going to talk a little bit about this very fundamental question here. Is there a need to continue public benefits energy efficiency programs beyond 2001 at all.

You may be wondering why are we even asking this question, since we're so well into this analysis.

But we've been working on this all along, as well, and one of the main reasons we are working on this so diligently is because we're required to, in language added by the Governor when he signed AB-1105. Some people refer to this as veto language, even though there wasn't a veto here, but the language basically asks -- and the full language is quoted in your packet for your reference if you're interested.

But we need to not assume that the program will be continued, and that there is need for the program without first showing why there is a need. So that's what we're trying to do in this report, as well as -- the appropriate funding level. The answer is yes.

And the factors we're considering in determining the program needs are the following: First, we've hired Rand Corporation who has worked with us in the public interest energy research program, to do an independent study. Part of the Governor's language required an independent assessment of the need for the program, so that's how we're accomplishing that. As well as through feedback from you and other stakeholders.

And that analysis is basically going to answer the questions what are the drivers that may lead California to a lower level of energy productivity, you know, in the absence of government intervention with these programs.

Are there potential --

PRESIDING MEMBER LAURIE: The status of that contract, Bruce, as you know, the Commission has approved the Rand contract, but it has to be approved by the Department of General Services. And that has not, as yet, occurred.

MR. CENICEROS: Right, thanks for that clarification. It's not a done deal yet, but it is moving forward quickly.

Also going to look at the potential net public benefits to maintaining and approving energy productivity through programs such as what we're proposing here.

Okay. Other factors that we're looking at in the meantime because we can't wait for this analysis for the answer to this question, are the other three bullets here, but, Mike, did you have a question? Okay. I'll entertain questions when I'm finished here, too.

We are looking at the effectiveness of the current programs through the existing market assessment and evaluation studies that have been produced, and assessment of the remaining opportunities for cost beneficial energy efficiency, and the recent changes in the market conditions, and how all those things are affecting the need for continued government funding, at least as programs. I'll just briefly talk about each of those

As far as cost effectiveness here, one thing we have is the utilities have been reporting every year their benefit/cost ratios in several different ways, and we're tying to get a picture of what that tells us.

As an appendix to the paper that Mike and I put together, we list the cost/benefit ratios for the most recent four years just to show what the trend has been. And they've been positive on the aggregate. Greater than one, in other words.

As far as remaining opportunities for energy efficiency, we had a model that we developed several years ago to help us assess the potential for energy efficiency, and we've adapted that model and we're doing computer runs right now -- it's called California resource assessment model -- to look at how much naturally occurring efficiency there would have been up till now without the programs and project that into the future. Look at how much more you get with the utility programs that have happened, and will happen.

If that tapers off, if the program's not continued after 2001, and also what would happen if we did continue the publicly funded programs.

And also it looks at the effects of the current energy standards, building standards, efficiency standards, and a couple of other factors. So that'll be complete very soon, and the results so far are showing pretty good positive effects of continuing the programs.

Okay, so basically our preliminary conclusions -- oops, I didn't talk about the market conditions, here we go.

Change in the market conditions. A lot of things are happening now that we didn't really envision, even when AB-1890 was in the works. And some things that we did envision and we need to assess the effects of those things.

The changes in prices are probably a big thing. A lot of people are saying with the dropping of prices once the competition transition charge goes away, is going to make a lot of energy efficiency that was cost effective before no longer cost effective.

But there are also other opportunities that are arising now that may lean towards meaning more involvement with energy efficiency programs. The bills are much more complex and prices more volatile than they were.

And you have this new problem that's been identified, of potential reliability problems in the transmission system that energy efficiency may be able to contribute to the solution of those problems, and those are often localized in nature, as well as on a larger basis. So we're looking at that, as well, when we discuss each of the things I mentioned here in more detail in the paper.

So, our preliminary conclusion gives us enough confidence to go forward with all the other recommendations in terms of detail of the administrative structured funding levels. All the results, new points, continuing need for the programs.

Where you can help us is to give us some feedback on whether you think our analysis is objective enough, even though the rating study will be coming along later, all these things will come into play when the dealings start going on in the Legislature in terms of whether this program continues and what the funding level and how it continues.

Is the methodology that we're using here going to be sufficient to satisfy both the supporters and critics of publicly funded energy efficiency programs, is it going to be rigorous enough. And are there other factors that we should be considering that we haven't yet. So that feed back would be very much appreciated.

Does anyone have any questions or comments about this part of the presentation?

MR. KAZAMA: Ladies and gentlemen, if you're going to give a comment, they are very important to us, so this meeting is being recorded, so if you would, before you speak, please state your name and organization for the record, thank you.

MR. MILLER: Just a comment. There are things I'll direct towards later in your presentation, which is why an assessment of the current program would affect the need for future program funding.

If a current program isn't working, that in my mind doesn't necessarily affect the opportunities in the future, more indicate a need for changes in current programs.

MR. CENICEROS: Right, but I think --

MR. MILLER: I'm sorry, I forgot to do exactly what you said I should do.

(Laughter.)

MR. MILLER: Peter Miller with Natural Resources Defense Council. Sorry.

MR. CENICEROS: Our thought is, Peter, that we need to address whether or not current and past programs have been worth the public money invested in them.

And if not, we need to explain what we're going to be doing differently very specifically in order to satisfy critics why this should be continued.

Any other questions?

MS. ten HOPE: Bruce, doesn't the model that we don't have the results from yet, isn't that looking at potential rather than historic?

That will be another factor that will be used in the final recommendation on the funding levels?

MR. CENICEROS: Yeah, that --

MS. ten HOPE: And that historic is only one of the factors listed?

MR. CENICEROS: Yes, it does. The main focus is potential, although it's based on some past data as well as --

MS. MARSHALL: It includes both the historic and the forecast.

MR. CENICEROS: Yeah. Thanks, Laurie. Will.

MR. NELSON: Will Nelson. I'm providing testimony and questions today as a private consultant. I'm also associated with Residential Energy Efficiency Clearing House. The testimony is not representative of that entity.

On the overhead, I don't know if you reviewed it at all, the scope and method of funding collection, it just refers to CPUC jurisdictional customers. Would just be the investor-owned utility service territory customers.

As I understand it, the working groups and many of us have been looking to a true statewide market. Is it the approach at this juncture of the staff and the Committee to omit consideration of how a charge is levied in the public territories? Or what consideration has been made thus far?

MR. MESSENGER: That question is part of the last presentation, but I'll answer it now. It's our belief that -- utilities are doing a good job right now in running their own programs. And there's no need right now for us to consider making this a statewide charge.

However, I would not consider it beyond the pale or outside the realm of possibility if the Committee came back to us and said, look, there's a lot of reasons why we want to have this statewide for all utilities as opposed to just investor-owned utilities, either for efficiency reasons or equity reasons or whatever.

But in the past that has been a difficult task, and the staff is just right now not recommending going there.

MR. ABELSON: One comment, Michael, I believe in AB-1890, however, there is a provision requiring the municipals, as a matter of law, basically to match the equivalent level, although it's not -- programs that was allocated. Is staff going to, for equity reasons or otherwise, at least recommend that that sort of parity continue?

MR. MESSENGER: It's our belief that that parity would continue regardless of what happened. I believe it's in the statute for post 2002 right now, but I would recommend continuation if that's an issue.

COMMISSIONER PERNELL: Excuse me, do all of the municipals have a standard procedure statewide, or is it each municipal do their own thing?

MR. MESSENGER: Each municipal does their own thing. Some of them work together in a group and they publish an annual report, I believe. It talks about what kinds of programs were funded by their members. But it's still left to the discretion of the local board to decide, for example, what's the definition of a public utilities program, despite the energy efficiency. All those things are left up to the discretion of the boards.

Stu, you probably --

MR. WILSON: I guess it's time for me to speak up. I'm Stu Wilson from the California

Municipal Utilities Association.

The provisions of AB-1890 were as described, really. They put a kind of a formula in the statute, a little bit obscure, but we wrestled with it, came to what I think is a reasonable conclusion about trying to calculate a level of funding which was intended to track overall the level of funding that was spelled out in AB-1890 for the investor owned utilities.

And I agree with you, my interpretation of that is that if funding levels going forward beyond the specific requirements of AB-1890, going past 2001 were adjusted up or down, that that would be a controlling factor in the formula for the funding levels for the municipal utilities.

Now, there may be people who read the law differently, but that's, I agree that that's a reasonable interpretation of the law. And it is true that the total funding level is established in state statute. The allocation of the funds between various types of programs is left to the discretion of the local ratemaking authority for the municipal utilities. Some tend to emphasize low income programs, perhaps more than others, depending on the community that they serve.

And I would just comment on one other thing, you know, that the statute that sort of gave impetus to this report and directed the Energy Commission to report back really was looking, I think, at the transfer of responsibility from the Public Utilities Commission to the Energy Commission, which, I think, leaves the municipal utilities sort of outside the scope of that legislation.

COMMISSIONER PERNELL: Stu, does your association track who's doing what for public good from the municipal side? Is anyone tracking that at all?

MR. WILSON: To my knowledge there's not a sort of formal systematic mechanism in place for trying to do that. We have, in our association, which includes nearly all but not every municipal electric system in the state, a committee upon which sort of the program manager type folks serve.

And that committee has periodically tried to collect information from the members, CMUA members, and prepare reports on our activities. But I don't want to represent that that is, you know, uniform, or that the data is entirely consistent, or that it's complete by any means, because it's really not.

COMMISSIONER PERNELL: Thank you.

MR. MESSENGER: Okay, we'll go into the last stage here in terms of the punchline. What funding level should we recommend, if any.

Well, what staff sat around and talked about, well, what should we do for trying to come up with a level -- I'm sorry -- coming up with a level.

We looked at basically five or six things here. First, it's kind of obvious, the funding level would depend on what are the future policy goals of this program. If they're going to change a lot, you know, if we're going to abandon market transformation and just work on the liability. Or if we're going to go back to resource acquisition, or whatever, that would have implications for the funding levels.

Second, we think it's important to look at the trends in program funding level because they give you an indication of how the whole market and the system might be able to adjust.

My opening hypothesis is it would be very difficult to have a radical change from the post trends, you know, either a huge increase or a huge decrease would be difficult for the system to maintain. And it would have probably dislocating impacts to the whole industry if you were to go way up or way down.

We also need to know, and we haven't yet gotten -- maybe we'll get to there this afternoon, what are the resource requirements of this governance and administrative structure. Are they more or less than the current resource requirements for the governance and administrative structure.

And that's a difficult one because in some cases the costs aren't explicit, you know. The PUC, for example, has costs of right now governing the system, but we have no idea how big or small that is.

Similarly, the utilities have an administrative cost of running the current set of programs which are not very clear. And if you look in their annual reports, exactly what's administration and what's implementation is currently under debate.

But hopefully we can get that so we have a pretty good idea of what the -- you know, how much money it takes to fund both governance, administration, evaluation and implementation of these programs.

The fourth major category is we're interested in the recommendations from the stakeholders and we're going to include those in our report, you know. What do various parties think would be a reasonable level.

And finally the relative cost burden. We talked a little bit about that already on different customer classes, you know, is it .5 percent of your bill, 1 percent of your bill, is that an acceptable level. You know, do customers seem to be willing to pay for these programs? Is there any evidence that they're willing to pay 1 percent of their bill. Is that fine with them, or is that too much, too little. So those are the general categories.

Um-hum, go ahead.

MR. RUFO: Mike Rufo, Xenergy. I was just curious as to why some of the -- a couple of the items that were on the factors considered for program need aren't under here for determining funding levels such as the assessment of remaining potential and its cost effectiveness. And such things as externalities and market barriers.

MR. CENICEROS: Want me to answer that, Mike?

MR. MESSENGER: Yeah, go ahead, Bruce.

MR. CENICEROS: They are. They are. On paper we say that in addition to the three we looked at for funding level, for the need for the program, here are some additional ones. Ones that Mike just showed. So, we're looking at those, as well as the others.

MR. MESSENGER: And basically my answer would be I wasn't sure whether those other analyses were going to be finished on time, so I just went with the ones that I was reasonably certain.

Now, I'm going to just sort of, assuming you read the paper, jump to the bottom line. And if this is too much of a leap in faith, then just stop me.

Basically in the paper we tried to look at things from various perspectives and the only two things that we were able to complete is to look at it, well, what if the policy goals were to change, what would the range of funding be that we could support.

And, secondly, what would the historical trend analysis support.

And when we looked at policy goals we could support anywhere from 150 to 280 million, depending on our -- and that's basically based on our belief about what types of programs are currently being funded.

And some of the key decisions that the Committee's going to have to make is are we going to recommend, for example, funding for what I call load management or demand responsiveness programs in the future. Is there a need to do that.

There's a separate study going on with -- and the Energy Commission and -- to determine what should be done with demand side, if anything to do with -- reliability profits. Does that need to be funded, is there a public benefit to that. You might need to add something on top of just -- program. So that's why that range is so large.

In terms of, you know, if you -- range of funding over the last decade, you could support any number between 161 and 352 million depending on, you know, where you thought you wanted to land in that range.

The last five-year average is about 260

million, -- 276, actual in 1980 was 180, so those are all data points that we could use in trying to figure out what would be a reasonable level.

Just to give you some historical perspective, the last time the funding levels were set they were basically -- this is what the PUC has authorized -- legislation. So that's another criterion you can use, just the current level of authorization, throw that in without any critical analysis up or down. So that's another option.

Basically staff hasn't got to the point where it's able to sort of balance on these factors and come up with a bottom line, but if I were to guess, staff is probably somewhere between 200 and 250 million as a bottomline after we weigh these additional factors that Mike was talking about in terms of remaining potential.

We're interested in getting parties comments about, you know, is that the right number to use, that type of thing.

MS. ten HOPE: Mike, the historic numbers exclude load management, right?

MR. MESSENGER: Correct.

MS. ten HOPE: Do you have an estimate of load management expenditures?

MR. MESSENGER: Historically -- first, they're in the paperwork. Historically I think it's the 216 and 40 million over the last decade statewide on load management programs.

And I think in the paper we said that we could see anything from zero to 50 million depending on the severity of the transmission constraints. If, in fact, there were some short-term sort of focused resource acquisition programs that could be run to reduce load in specific geographic areas. And whether or not -- definition of energy efficiency, what I call load responsiveness devices that could help the local transmission people cycle down load during time criticality time periods, in return for some rate reduction.

You know, if we were to go -- that could be up to 50 million. And like staff said, we still see that there's a possibility that we'll decide that zero is needed, that they will be able to work it out themselves through some other set of -- bids, or a variety of other things that might not need public funding.

MS. ten HOPE: And when you're making a recommendation that you could go with anyone of those, based on historicals, is the recommendation including load management? Or is the load management on top of --

MR. MESSENGER: Load management would be on top of.

MS. ten HOPE: Okay.

MR. MESSENGER: -- have to figure out a tentative balancing -- to historicals, how to deal with that.

MR. VINE: Mike, leave this on --

MR. MESSENGER: Go ahead.

MR. VINE: Ed Vine, University of California. One of the things when I was looking at your paper for the policy goals, that doesn't include some other costs which the other numbers do include.

For example, measurement and evaluation and administration of the programs. And particularly on the administrative side, I don't know what percent of total dollars, but one would think you'd want to include both of those if you're going to try to compare it with the other numbers, as well.

MR. MESSENGER: I agree with that, that that's one of the factors that remember I said, we don't have yet, is the resource requirements from the government -- so those are going to have to be added in, they're going to have to be added on top of the policy goals, which are really programmatic, just so that in some ways it's not an apples-to-apples comparison. These are total, these are just programmatic, so we're going to have to add that component in, that's correct.

But, you know, my feeling is that's going to be a 10 or 15 percent correction.

MR. HAWIGER: Marcel Hawiger on behalf of TURN. I just want to make sure I understood your last response regarding the load management programs.

When I look at your table 2 on page 8 it looks like the 0.250 for load management is included within the 150 to 280 recommended based on policy goals. Is that what you just said? Or did I misunderstand?

MR. MESSENGER: That is correct. It's included in here. It's not included in historical. We're considering that sort of a policy level --

MR. ALVAREZ: Mike, I guess the question I have is -- Manuel Alvarez, Southern California

Edison -- is in your analysis you start with the 150 and increase. Did the staff do any analysis that widens that breadth, either from zero to some higher level of funding? Or do you just ignore both ranges of your 150 to 280?

MR. MESSENGER: I didn't understand your question. Are you suggesting that 150 to 280 is too narrow, or --

MR. ALVAREZ: Well, that's what I'm asking. None of your analysis identified a broader option of policy for this activity starting from no funding of this program to double funding of this program.

So, you've basically narrowed it down to the range and focused the policy discussion only in that range. So did you just totally ignore those other points, or think they were not viable?

MR. MESSENGER: Well, as I mentioned it today, I think adopted evolutionary perspective that suggested it would be difficult for the system to either double funding or go to zero. Bruce looked at the question in the zero case of whether or not there was a continuing need.

And what I heard back from him is at least preliminarily there is a continuing need.

So I didn't spend much time on the zero case.

The doubling case to me didn't make a lot of sense, at least in the near term, because there's got to be a transition -- it's difficult when you make a transition to spend even what you thought you were going to spend.

Witness what happened in 1998, when budgets were, you know, 250 million and actual was 280. And there was a lot of other things that caused that, but if there's another transition I would expect that kind of fall-out.

So I think the answer is yes, that we're trying to narrow the range to 150 to 280. If you think that's inappropriate or can think of other things that we should do, we'd be happy to listen to that.

Go on to the next slide.

MR. MILLER: Peter Miller with NRDC. A general comment. The policy goal section in your paper, and you don't have a lot of detail there, is the most confusing part for me, because it seems to me to mix a number of different issues. In particular the question of load management, which is, I think, a different policy objective than what we've had with where I see strategies for the policy goals of energy efficiency conservation resource acquisition and market transformation.

So I'm not sure why those are being -- that kind of consideration is being brought to this level of evaluation of overall funding. And the data, itself, is confusing, since there's a cite for the -- there's data for 1998 nothing for 1999. And the data don't really match what you're citing for 1999.

So, I mean, there's detail concerns here, I'm not sure if we want to take the time to go into it. If you'd prefer to just have that in writing or what.

MR. MESSENGER: I would agree that we don't have enough detail on 1999. And I also agree with you that there's a policy call about whether you want to try to think about strategy as a way of looking at funding as opposed to market sectors or type of studies.

I think the best thing to do right now is to probably give you more detail in terms of '98, '99 in the next draft. But to acknowledge that I understand your concern about whether you should make these kind of calls based on strategies, or whether you should make them based on -- load management and energy efficiency.

What we try to do is combine them. We probably haven't combined them very elegantly

But what I hear in your comments you're not sure that it's a good idea to split things in the strategy just in terms of policy goals.

MR. MILLER: More that you shouldn't be making a decision about the overall funding based on evaluation of a particular program.

MR. MESSENGER: Okay.

MR. MILLER: Rather that you make it based on the opportunity for the overall objectives.

MR. MESSENGER: Yeah. I think I know what you're talking about.

MR. MILLER: Well, just to be specific, on page --

MR. MESSENGER: Down at this --

MR. MILLER: Yeah, on --

MR. MESSENGER: -- reference?

MR. MILLER: -- page 7 it says that staff believes the level of funding currently devoted to supporting resource acquisition type programs should be substantially reduced. And the only thing that you cite to support that is a first year evaluation of the nonres standard performance contract program.

And to draw a broad -- about the overall funding level based on the first year evaluation of a single program just seems to me to be --

MR. MESSENGER: A stretch.

MR. MILLER: Yeah, thank you.

(Laughter.)

MR. MESSENGER: We will respond to that comment. That's a very important comment and I -- more evidence there. And particularly I think there needs to be a balance between both the effectiveness of the tool and the opportunity.

We need to look at both how effective the tool has been, in this case rebates -- as well as what the additional opportunities are. So I wouldn't only look at additional opportunities, I want to look at both. And you're right, we haven't melded them appropriately yet.

MR. MILLER: Okay.

MR. ABELSON: One last question, then. It's a variant on the clarification I asked earlier. Is it staff's position that the effect of inflation over 10 years in this programs, because they do go back at least that far, is irrelevant? Or are you intending to factor it in some point along the way in terms of the purchasing power of the programs, themselves?

MR. MESSENGER: We're planning to deal with that in the next slide here.

The next question that we think is important is given that we can establish some funding level, how should funding levels been changed?

Right now we have the flexibility that the PUC can choose to do funding annually, biennially, every three years, sort of at some discretion. The question is what you propose in this legislation in terms of what's the appropriate timing.

We looked at three options and we really haven't -- we don't really have a recommendation of which one is best. We're interested in looking to feedback from stakeholders.

We could either specify a periodic review by the CEC like every two years, and a recommendation back to the Legislature that would change the level.

Or we could specify some sunset, keep it constant until the year 2006, let's say, and then let's bring it back up again in the Legislature.

Or we could set some specific funding period which would require less -- but at the same level. So that's -- review. If it's done in 2006 and the Legislature needs to reauthorize at whatever level it feels appropriate.

So those are sort of the three variations on a theme. We're interested in getting comment from people about whether that's the right length of time, four years, or should be every two years.

And then the question is who should be making a recommendation to the Legislature, should it be the CEC, some other party, whatever.

MR. MILLER: Peter Miller with NRDC. All three of your options seem to assume that there's continuing legislative reauthorization of funding levels. But the Legislature has only once in the past, whatever, 20 years that these programs have been run, has only once actually set a funding level.

Your options seem to assume that that should now become the norm and that the Legislature should periodically establish a funding level. Why is that?

MR. MESSENGER: I believe that when we went to public good funding the Legislature sort of assumed that responsibility, -- that it wants to reauthorize it to control that level. If there are other options you'd like us to consider please let us know.

If you think, for example, we should ask for a funding level and have that be a continuous funding level subject to some change at the Legislature, that would be easier from our perspective, but I don't currently perceive that it would be politically realistic. But I'd be interested in hearing people's comments.

When we sought continuous funding appropriation on other public goods programs the Legislature has pushed back and said, no, we want to have this review every three or four years.

MR. ALVAREZ: I have a follow-up on that. Manuel Alvarez with Southern California Edison Company.

I think we all know what happened in AB-1890, and when the Legislature determined the level of funding, it took the level of funding from the Public Utilities Commission determination.

So it just transferred that authorization to legislative authority. There is no independent evaluation programs or activities. It just continued those efforts.

So that leads me to the question, you know, how do you get to the question of what you're going to do with funding if the Legislature has to appropriate funding annually or biennially, whatever it may be.

MR. MESSENGER: Well, our proposal is not to go to an annual or biennial, but to have them authorize a level, and then we could give them some periodic review and recommendation to continue or not.

Let's say they authorize 200 million a year, and in the year 2004 we came back and said, we think it needs to go up 50 million. The Legislature could either act on that or choose to keep it at 200 million.

I think we're saying the same things. You're right that the Legislature tends to defer to the agency in charge. I'm not sure that it would happen in this particular case.

Any other questions?

Now I get to cover the scope and method of funding question. Currently these programs are funded more out of CPUC jurisdiction customers for electricity and natural gas. There's some variation of natural gas not for customers out of that. They don't pay the charge that all core customers do.

And currently the funding is collected as -- a revenue requirement is set in the bill at a certain minimum funding level and the utilities collect that by figuring out through a rate allocation proceeding exactly how much they have to collect from residential customers in terms of per kilowatt hour, small commercial, large commercial and industrial customers.

Staff is recommending that we can deal with that system, although this is such -- to be collected from all PG&E jurisdictional customers. And we recommend to deal with the inflation problem that you don't set some level that doesn't get adjusted over time for inflation.

And you set either a fixed percentage of the bill, and then use that to bill per kilowatt hour, bills per therm collection from all customer classes.

So you'd say, okay, the goal is going to be 1 percent of bills. One percent of bills in a given year might be 12 mills per kilowatt hour. Then it might be 13 mills per kilowatt hour two years after that because of inflation. So you present it as a fixed percentage. And that would have the advantage of rising and falling with the sort of sales in the marketplace.

If you fix it at a flat level like 100 million per year, every year, it might go up or down depending on what the sales in the marketplace would be. So that's a proposal.

MR. MILLER: Peter Miller with NRDC. It seems that there's one part of the concern, but the other was that when you look at the historical levels, if you use nominal dollars for past years you're underestimating the amount of money that was spent in previous years.

So that the historical analysis should actually be adjusted to account for inflation from previous years. Five-year average would, in fact, be higher. The range would be higher on the top end.

MR. MESSENGER: We can do that.

MR. NELSON: Will Nelson. I have a

brief presentation on guiding principles for funding this morning and for administration this afternoon. But I would like to comment right now to focus on this muni question. I'll raise it again in that presentation.

But I want to be pretty emphatic about this. I would regard it as a basic policy flaw not to resolve the dilemma of funding drawn from IOU territories and funding drawn from public board territories.

The basic premise is a market-based approach towards new technologies and new services. That's one basic premise. We have a basic premise of restructuring that cross-cuts all service territories.

And there has been a substantial working group and public agency investment on trying to arrive at a new paradigm. And I do not believe that the munis should be left out of that paradigm. It would be extremely artificial.

I believe that eventually the programs that we're talking about will be superior more specific focused programs on energy efficiency, which in many cases have no resemblance to the core mission of what utility distribution companies are.

So therefore the municipal -- and based on a premise of market transformation there's no question that municipal customers will benefit, and benefit greatly, from budgets drawn from IOU service territories.

So that brings me to -- there's a fundamental legal problem, I believe, and I believe that this has existed for a couple of years, but it hasn't been such a problem because the IOUs have had the authority to spend in their service territories through their own administrations and through their organizations.

When and if this rate component is largely divested from their control I don't think we should believe that they're going to look kindly if they believe that they're being treated inequitably, and I believe by not having an equitable across-the-board application of the charge, the likelihood of a legal challenge is very very great.

I'd also like to make a couple of other points. I don't regard this --

MR. MESSENGER: Can I interrupt because I just didn't understand that point. Who is not going to be treated equitably. You think the UDCs weren't being treated equitably?

MR. NELSON: The investor owned utilities, in terms of the rate component, apply to their charges and their bills might very well not be treated equitably because they would not have use of those funds in the same fashion that say a public board organization would.

In terms of the levels, there might not be an inequity, per se. But they wouldn't have the use in their organizations.

I don't regard this matter as a simple transfer of authorities from the PUC to the CEC. I've said before in these workshops and say again, I consider this a both/and proposition. And I want to say this is a both/and proposition with the muni boards, as well. This should be a joint effort.

My presentation will propose a mechanism for doing exactly that. And that's a dual surcharge mechanism. One on the transmission and distribution component of the charge and one on energy usage.

I want to see us resolve as many problems as possible, and this is a major problem area. And I don't want to head into legislative hearings saying munis do a better job at energy efficiency programs than IOUs, or aren't IOUs doing a good job. I would like to move forward with a new paradigm.

And lastly, I do believe that accountability is needed, given these are considered public goods charge, public rate components, more accountability is needed by the munis in the form of some sort of formalized reporting requirement. In this case they would make their reports on their T&D EE charge to the California Energy Commission.

Thanks.

MR. SPASARO: Frank Spasaro, Southern California Gas. A couple of comments or questions.

You said noncore customers have the ability to opt out. What exactly did you mean by that?

MR. MESSENGER: I thought there was a set of customers that in SoCalGas' area that had, in fact, opted out as part of the AB-1890, is that incorrect?

MR. SPASARO: Well, first of all,

natural gas is a part of the AB-1890, so it wouldn't be covered whatsoever.

MR. MESSENGER: Oh, --

MR. SPASARO: I thought you were getting at the point that natural gas is non-bypassable in terms of a surcharge or anything, so I wanted to raise that point that that's certainly going to be an issue in terms of how you look at funding, moving forward with natural gas.

MR. MESSENGER: You're right.

MR. SPASARO: And the other point would be on the second bullet that you have up there, I haven't read your report. I don't know if you've looked at how the PUC does cost allocation with these programs with natural gas. And that may or may not be an issue as you move forward, as well, in those customer classes if you change that kind of cost allocation as it currently exists.

MR. MESSENGER: It would help me if you review what method they use to cost allocation.

MR. SPASARO: It certainly isn't an equal cents per therm basis right now; it's based on an allocation by customer class. And it's litigated in the rate cases in the BCAPs as to how much a specific customer class would get.

And then that absolute dollar amount is then just divided by whatever the sales is going to be.

MR. MESSENGER: I was hoping to avoid all that litigation, and just move to an equal cents per therm. But that has other problems with it, I understand that.

MR. SPASARO: Yeah, it definitely will, trust me.

MR. MESSENGER: Okay.

PRESIDING MEMBER LAURIE: Okay, is that it, Mr. Messenger?

MR. MESSENGER: I have one more slide. I'm sorry, did I miss somebody -- okay.

So here's the comments that we are proposing. We've already had some comments on -- if we missed any factors to consider in setting funding levels we'd be happy to hear from you. And I heard one from Mike Rufo. If we should have some kind of different scope in terms of the collection mechanisms, or a different collection mechanism, itself, in terms of the customers we collect from, or how we collect it.

And we're interested, and we got one, I think, option from Peter in terms of alternative mechanisms -- modified funding levels over time.

PRESIDING MEMBER LAURIE: Okay, we are going to seek public comment at this time. Please make your comments concise and to the point. We will keep time, because time is a limited resource, you'll get a maximum of ten minutes at which time you will get the hook.

And we will be keeping time, so please adjust your comments accordingly.

Representative from TURN, please.

You're always free to submit comments in writing, by the way. And let me talk about that briefly.

We need comments in writing, if any, by when? Any additional comments in writing by when? We don't have long.

MR. SLOSS: Because we have to have really a complete draft done by the end of this month, it would be real nice, and with the use of our server and internet it's pretty easy to do, is if we could get them by the end of the week, by Friday.

PRESIDING MEMBER LAURIE: Okay.

MR. SLOSS: If that's not unreasonable.

PRESIDING MEMBER LAURIE: We won't --

consider it to be really nice if they can get it the end of the week. We will indicate if you want your comments heard and digested with reasonable opportunity for input, get it in by the end of the week, please. Thank you.

Sir.

MR. HAWIGER: Thank you very much. Good morning, Commissioner Laurie, Commissioner Pernell, Staff.

My name is Marcel Hawiger. I'm an attorney with The Utility Reform Network, TURN. This is my first appearance in front of this Commission, thank you.

TURN represents the interests of residential and small commercial customers. As a result you'll see that my comments tend to focus on the issues that affect those customers.

I have some fairly general comments regarding the staff report, and then some recommendations for particular items to include and additional factors to consider in setting the future funding levels.

Historically TURN has always supported energy efficiency programs because there was always a public benefit to all ratepayers when money could be spent on energy efficiency and avoiding investment in generation assets which would be paid by all the ratepayers as part of their rates.

Energy efficiency has been proven to be more cost effective dollar per dollar than investment in generation.

There are two changes that have occurred in the past two, three years, however, that are important and affect the relative effect of energy efficiency on different customer classes.

I believe those changes should be more explicitly defined in the section 3 regarding changes in market conditions. They are not really in this draft staff report.

Those changes are two. One, under AB-1890, as a result of market valuation we've seen divestiture of all generations except for some specific hydro and nuclear, from the utilities.

What this means is that generation investment is no longer specifically part of rates, or at least future generation investments. Thus, that link between the public benefit of energy efficiency, lower rates, is no longer as clear. There are always benefits to the individual customers who receive energy efficiency services, but those do not necessarily translate to all ratepayers.

I'll come back in a moment, I think Rich Ferguson provided very valuable insight in his report that was on the website regarding public benefits of energy efficiency, and I'll come back to that in a few moments.

The second major change has been the shift to a goal of market transformation as a fundamental goal of energy efficiency programs. And the concomitant shift to a set of milestones as recommended by the California Board for Energy Efficiency as the yardstick to measure program performance.

What this change has done is in some ways minimized the link between actual energy and dollar savings and program performance. There still may be a link, and I'm not necessarily saying that the goal of market transformation is bad. But that link is not as clear.

What this means, as far as TURN is concerned, that now there are increasing potential problems of equity among customer classes. And by this I mean the fact that historically nonresidential programs have been funded at a greater level than residential programs because everyone knew that you could get a greater bang for the buck by focusing on a large factory and decreasing energy use in that factory.

There were greater potential savings. That transaction costs were less, et cetera, et cetera. But we also knew that if you did that and you decreased the total energy use and that benefitted all ratepayers.

We're not sure that benefit to all ratepayers will occur, and therefore I think that part of the factor, factor 8 listed in the report, states that one should consider the relative cost burden of funding these programs and different types of customers.

I suggest that we need to consider both the cost burden, the equity between how much does a customer class contribute to the programs versus how much funding is spent on this customer class. As well as the equity of the benefits, the relative benefits. How much of the potential savings occurs as a result of programs focusing on residential and small commercial customers versus programs focusing on nonresidential customers.

Now, let me just for a moment talk about those two equity issues. I think there has been some shift and more funding of residential commercial programs in proportion to the amount of revenue contributed. And TURN welcomes that change.

We do note that because of the allocation issue that was raised of how the revenues collected, which I won't go through in my brief time, there still is a net shift of money from residential to nonresidential customers.

And the staff report notes that there are potential savings in discussing factor 2 in the residential and small commercial markets. And TURN would certainly welcome greater emphasis on spending on programs that affect those customer classes.

But secondly, the issue of benefits. And here our concern is that programs be effective. And certainly this is one of the factors that's listed. And I neglected to mention at the outset that TURN really does strongly support those factors, the eight factors listed by staff. And we feel that those really should be examined, the program effectiveness, the future goals, the effect on different customer classes, the potential savings. Those really need to be examined in order to determine an optimal funding level.

But in terms of program effectiveness, we don't want to see funding on residential programs or programs geared toward the residential customer if they provide customers with lots of information that they don't use, and don't actually change behavior and don't produce energy savings. That's not what we're after.

We're after programs that produce energy savings. And this leads me to my last major comment, and that is that as part of determining program effectiveness we need to decide, we need to have some sense of what will be the new measurement protocols for determining program effectiveness under the markets transformation regime.

Not only that, but we need to have some sense of where are we going. Market transformation is a valuable goal. It is not one where TURN has any expertise in particularly, so I'm just relying on the staff reports.

And I would offer two comments. One is

if the ultimate goal is to develop vibrant private markets that no longer need public subsidy, we need to have some idea of how do you determine when you've reached that goal.

And second, how do you determine that the goal cannot be reached; or that you need to continue funding these programs from public goods, because there are inherent market problems, difficulties in addressing energy efficiency. And is it possible that those market problems exist differently in the nonresidential, the new construction, or the residential side.

And so maybe those need funding levels for those different programs as well as different customer classes, may need to be considered separately in the long run under market transformation.

And so in closing, in terms of any specific suggestions, I think TURN would recommend that there be some review mechanism so that actual benefits of the programs be connected to their funding level.

The funding should not just be based on authorized historical levels, because those were levels suggested by the utilities at the PUC proceedings.

Thirdly, I don't have, at this point, an opinion as far as the legislative review, and I think that is an important question and we will try to come back to that if we can make a specific recommendation.

And lastly I would urge the Commission to perform or to fund some studies along the line of the study performed by Mr. Ferguson of the Sierra Club. His study shows that there are still public benefits because obviously if demand is reduced, prices of electricity at the PX are lower, and therefore all ratepayers benefit.

TURN's question is how does that benefit translate to the amount of money paid by different customer classes. Is that still a net benefit for residential and small commercial ratepayers.

Thank you very much.

COMMISSIONER LAURIE: Good questions, thank you, Mr. Hawiger.

Representative from EPRI.

MS. GUILD: Good morning, I am Renee Guild. I am the Executive Manager of EPRI's public benefit programs. And, Commissioner Laurie, Commissioner Pernell, Staff and members of the public, I thank you for the opportunity to speak today, and for the openness of the workshop process that you've crafted here. I think it's certainly developing a rich body of thinking on the current status and future of these programs.

EPRI's remarks today focus on the opportunity for the CEC to develop strong linkages between the public benefit program and the PIER program.

Approximately a year ago I led an EPRI-sponsored workshop at the CPUC that was attended by several of your staff, Laurie ten Hope and Sy Goldstone, as I recall, were there, to discuss what we perceived as a gap between the administration of energy efficiency programs between the PUC's market transformation oversight and the CEC's development of the energy efficiency programs within the PIER fund.

And the need for some consideration of how to fill that gap in terms of how to develop good technologies that will be used by the marketplace in the market transformation effort.

I think the invitation to discuss the administrative options presented in AB-1105 presents an opportunity for the CEC to create oversight structures for both activities that could be joined at the hip.

Two ways would be to have the same CEC Commissioners providing oversight by the subcommittee structure on both funds, or perhaps just having one Committee serving both.

Secondly, some of the same individuals could serve on the independent review panels for both activities. For example, the PIER fund independent review panels are meeting upstairs yesterday and today, and I note that Peter Miller's in the room here today, and he serves on that panel. And I'm sure that there might be others among that committee that would be willing to serve on both committees that would provide some kind of independent review of both programs.

This would help insure that the necessary energy efficiency technology tools that are needed to achieve sustained permanent energy efficiency downstream are in the RD&D pipeline, and that both public purpose funds are invested to achieve their maximum public benefit.

Finally, I urge you to take full advantage of the charge given you in the language of 1105 to consider the synergies -- I like that word -- between the public good programs proposed in the PIER program and develop a strong connection between the two in whatever administrative structures you choose.

Thank you.

COMMISSIONER LAURIE: Thank you, Ms. Guild. Mr. Flood, please.

MR. FLOOD: Good morning, my name is Richard Flood; I'm Executive Director of Community Energy Services Corporation. We're a nonprofit organization and licensed contractor serving East Bay Area. And I'll make some brief comments today, and I will be following up with written comments by Friday.

My point for today is regardless of the administrative structure that's chosen for energy efficiency I'd like to encourage the establishment of regional energy offices to deliver energy efficiency services in support of local government initiatives.

As I'm sure most of you are aware in 1984 AB-1659 was signed into law to authorize local governments to create community energy authorities to plan and construct new energy projects, develop solar energy and energy conservation plans and ordinances and to be a viable structure for accessing tax exempt financing for energy efficiency or renewable energy options.

To date only two such regional energy offices have been established, both in southern California. The San Diego regional energy office, for example, has operated for over four years now in coordinating energy services for the San Diego area governments, or SanDAG. I believe it was support funding from public that's charged moneys from San Diego Gas and Electric.

There's strong support for the establishment of three or more similar offices in northern California in the next year.

As one possible structure, that's my organization. We, among other things, manage a U.S. Department of Energy grant program under the Rebuild America Partnerships. Our local office is called Reenergize East Bay, and it's actually a consortium. It includes the Cities of Oakland, Berkeley and Emeryville, the chambers of commerce of the three cities, PG&E, the Building Owners and Managers Association of East Bay, and also the Energy Alliance, which is an energy professional organization comprised of about 70 or so companies energy service providers in northern California.

We work directly with the city councils, with energy officers, with community development -- economic development agencies, public works departments and others who are already working on other community improvement projects.

We integrate energy efficiency and water conservation into those activities. This frequently includes activities such as business retention strategies, neighborhood economic development improvements, municipal cost reduction programs, facades improvements and a range of things the cities are already doing.

We deliver products and services to the sectors that we feel have traditionally been underserved by utility based energy efficiency programs. And again, with the equity issue, have not necessarily gotten their fair share out of the moneys, which are typically not the target markets of the large ESCOs.

This includes municipal facilities, small commercial sector, multifamily residential. We also work with light manufacturing and industrial and other lower economic customers.

We deliver our energy efficiency services through a variety of mechanisms. Several of the communities we're working with have ordinance based programs that are quite effective in delivering energy efficiency programs.

We've also helped several cities to develop new incentive programs. One, for example, that rather than a direct rebate program, buys down the payback period of installed lighting and control systems to a two-year period. Quite an interesting program.

We also coordinate with other state and federal programs such as EPA and DOE, trade allies program such as ClimateWise. DOE has a new program called business partners, building solar roofs, recognized organization. And of course we also work with the utility-managed incentive programs.

Right now we're working with PG&E to develop new projects that are affiliated with four of the statewide incentive programs, including the small business standard performance contract program, multifamily SBC, Savings by Design which, of course, is new construction, and obviously the express efficiency program.

I plan to provide some additional information on the potential role of Regional Energy Offices and some tables outlining current activities to you by Friday. Thank you very much.

COMMISSIONER LAURIE: Thank you, sir, very much. Mr. Nelson.

MR. NELSON: Thank you. Good morning, Commissioners, my name is William Nelson, I'm testifying as a private consultant.

I'd like to say first off I am in substantial agreement with the general direction outlined in the October 6th staff paper for administration. I have details to provide. I do have major differences on the question of the scope of funding and how the charge is applied.

COMMISSIONER LAURIE: Are you going to be here this afternoon, Mr. Nelson?

MR. NELSON: Yes, I will be here this afternoon.

COMMISSIONER LAURIE: Well, I'd like you to limit your discussion this morning to the funding issue.

MR. NELSON: Certainly. And if you'll turn to the back of the handout I have, that addresses the principles for program funding and authorities.

The major difference I have with the direction thus far on funding is I believe that a role should be retained for the Public Utility Commission, as well as having a role for the public boards. As discussed a little bit earlier, I think bifurcating the approach, having the public boards completely control their energy efficiency programs and completely eliminating the Public Utility Commission would be a highly irrational approach.

What I'm recommending that this Commission recommend to the Legislature is to establish two minimum uniform energy efficiency surcharge rate components.

Now, rather than regarding this as complexification, which it may appear first off on one level, I think this will alleviate and clear up major problems discussed.

Recommending one surcharge on the transmission and distribution charge on the bill to be regulated through the public utility boards and through the Public Utility Commission. Now, in the case of the utilities commission they would continue to have authority on these rates, and would receive them as applications from the distribution companies.

And the legislation should authorize them to have the ability to establish trust accounts if they deem that useful. To direct distribution to the CEC trust accounts, or to permit the UDCs, themselves, under its jurisdiction, to administer the funds.

And I'll just refer you to the administration portion on the front 1C. When I speak of a UDC role, it's a much more restricted role in the energy efficiency services than they currently conduct, but a role, nonetheless.

The second component, the second surcharge would be levied against energy usage. And these funds would flow into the CEC trust accounts. And on a biennial basis, every two years, the CEC would review the structure and application of this surcharge.

It may well be that we would start out with a uniform type surcharge because that will be simpler to justify to the Legislature. But in time we might find that a more structured charge makes more sense.

Point 4, the PUC and the public utility

boards would continue to retain their rate-setting authority on the T&D charge. In terms of the numbers, the ballpark that I'm thinking in terms of, if you look at the current budgets, perhaps $1 might be raised and collected on the T&D portion for every $3 or $4 raised on the energy usage surcharge.

So, the UDCs and the munis would have direct control and authorities over, say, one-fifth to one-quarter of the funds that we're speaking of today.

I also specifically recommend dedicated funding from the energy usage surcharge for local jurisdictions and the community energy authority programs. And that dedicated funding should be not less than one-eighth of the energy usage funds that would pass through the programs, or the designees of the local jurisdictions of the community energy authorities that meet CEC criteria. So CEC would have oversight authority once again.

And then speaking to the use of the funds by this agency, itself, on the energy usage surcharge, I address information technology functions which I've long supported an elevation of that, public programs and interagency integration.

And then the general administrative area. The legislation should set a limit and should provide to the Legislature that the Commission will not use, I'm recommending, more than one-eighth of the fund for these types of services.

We should be seeking the strengths of all of the management organizations involved to date in these programs. We do not want to lose the linkage with the utility distribution company functions, on the rates, the rate classes, the customer classes, the meters, how meters are configured, with lessors and lessees, master meters and submeters.

The UDCs will continue to run the billing platform. I'm completely persuaded of that for quite some time for most customers, and certainly probably for all of the residential and small commercial customers.

We also want to have a continued linkage with the system reliability issues and the peak management issues.

Do not leave the natural gas rate

component issue behind, even though AB-1890 is an electric component focused program. Companion legislation needs to be brought in to address the natural gas rate component.

I'm recommending a large portion come under control of the gas distribution companies, and that specifically seismic hazard mitigation be called out to be synergized with energy efficiency planning in the gas system.

The remaining 50 percent of the EE gas read component I'm recommending would go to a separate CEC trust account. And the CEC would budget and distribute that account. It could blend support of those funds with the other EE programs from the electrically funded programs. They could also provide special consideration for gas technologies and the gas systems for gas-related EE projects.

So that the gas companies, as a stakeholder, would have a venue to come in and discuss the use of those moneys for their customers.

And in closing I would just like to recommend on the funding levels we are functioning basically on precedent. I don't have enough information to go beyond that. Other than to say the funding level should be not less than what it is currently. It should be adjusted for inflation. It should also be adjusted for the growth in California's economy, which is considerable.

Thank you.

COMMISSIONER LAURIE: Thank you, Mr. Nelson, very much.

Mr. Rufo, did you want to comment at this point?

MR. RUFO: My name's Mike Rufo, I'm representing Xenergy. We're an energy information consulting and implementation firm, 200 people nationally, about 30 folks in Oakland serving the California and western regions.

The only thing I wanted to say about the funding level, most of my comments have to do with administrative structure, which is this afternoon, is with respect to the proposal on the four-year minimum, that was one of the proposals for the length of funding.

I think, in my opinion, that is a minimum. Anything less than four years is not going to be able to really marshal the private sector in any constructive way, given private sector investment and budget forecasting processes. Especially given the fact that we know when there is a transition that it slows down somewhat the effectiveness of the expenditures.

So if we move into a transition again it will take, you know, at least a year or two to get through the transition, so that only leaves two years to really kind of get into the real effective part of the process in terms of capturing public benefits.

So I would say that, you know, four years is kind of a bare minimum. There's really almost no point in going forward if you don't go forward with a four-year minimum.

Second sort of point, somewhat of a joke, but not really, is that a number of our recent studies and those performed by other consultants show that there is and has been a fair amount of spillover of public benefits into what we call the low DSM states in the country. Those states that have not invested over the last ten years in DSM programs.

We think we can show that there's been a significant spillover of energy efficiency into those states. And really, they're capturing a public benefit created by states like California and some of the New England states. So I would encourage those who have the relationships with some of the other states and the federal government to work with those entities to do their fair share in terms of capturing these energy efficiency public benefits.

COMMISSIONER LAURIE: Thank you, sir.

MR. RUFO: Thank you.

COMMISSIONER LAURIE: Mr. Ely. Good morning.

MR. ELY: Good morning, Mr. Commissioner and members of staff. My name is Richard Ely. I'm here representing ADM Associates, but I'm speaking much more generally as an economist.

I thought I would take a moment at this particular juncture to back off any of the details of the particular programs or some of the details that have gotten into and sit back and ask what are we doing.

I think we have a terrific opportunity. There's enormous economic horsepower, economic analyst horsepower here at the CEC. And as you're facing the Legislature you have an opportunity to reevaluate the entire structure.

I have three comments and a suggestion. One, on the funding mechanism. There's an inherent flaw in the current funding mechanism.

We are presently in effect taxing the consumption of energy, yet there seems to be no, that I can find, any reason to do so. There's no public goods -- public cost created with the consumption of energy. There's no pollution created with the consumption of energy.

All of these factors come from generation of certain types, and to some extent, transmission, and to some extent distribution. Yet, we're taxing the consumption of it. This means that we're taxing particular entities basically on the wrong end. What we should be doing is taxing those particular sources that create public costs.

The fundamental principle here is that if you're going to have a publics goods charge, that public goods charge should be rested, or should be incident upon the entity or the source, if you will, of those things.

The way we're doing it now is, in effect, we are taxing consumption, which has absolutely nothing to do, or very little to do with the generation.

My recommendation is to come up with an underlying economic model of what it is you're trying to do, and to formulate policy from that model. Without an underlying model that is contained with various measurable quantities, public policy is very difficult to make.

This is being addressed in states, I believe, like Pennsylvania where they have market baskets, they have differential taxation on different sources of public cost. In effect, renewables and that type of thing I believe supported by different groups at the CEC, are promoted in effect. They are subsidized in a somewhat revenue neutral manner by taxes on more socially burdening.

This is a public goods charge. In effect, it's transferred over and funds things that are not so burdensome.

It can also, as it is presently being used, come over and fund on energy efficiency programs to the extent that they meet public goods and public needs.

My second has to do with allocation.

Customer classes. Much of the comments made by TURN I'm concerned about. If we're to have a public goods charge, those moneys, in effect, should be returned to the groups of customers, if you will, or the groups of citizens in the state that are burdened by those public goods.

The idea that you would return, in effect, to the polluter the same amount of money, in effect, that you've taxed him makes no sense. What you should formulate is a plan that if you're going to tax a pollution or a public bad or a public cost, you should transfer that money to the people or entities who are burdened. They may be the same entities, they may be the same customer classes, but they may not.

And unless you have a good underlying economic model as to what you're doing, in terms of transferring allocations with public goods, you're not going to be able to correctly allocate that.

There's a fundamental principle right now that seems to be prevalent that in effect customer classes, if you will, should be made whole. Yet there's no underlying model that I'm aware of that says the social costs of these particular classes are made whole by the public goods moneys that are returned to them. Without that underlying economic principle, it makes no sense to have it as it is. You're, in effect, paying the polluter back the very moneys you're taxing from him.

Finally, a third comment is on market transformation or mechanism. These are public goods moneys. Private entities, by definition, cannot supply public goods. Public goods cannot be supplied by the private sector, by definition. It's simple economics.

The more that we pretend that we're going to privatize public goods like parks and whatever the economist means by a public good, we're clearly heading in a wrong direction.

Again, what is missing here, what I recommend that the Commission take this opportunity to do is to sit back with some good economists and come up with a model of what it is we are doing here. What is the underlying economic model that we are trying to maximize.

Formulate a set of objectives through the usual advocacy process, a set of objectives that can be measured or at least estimated by organizations such as Mike's, who's done an excellent job, ourselves or others, it doesn't really matter, and with that measurable set of objectives you can derive policy.

And from those policies you can derive programs. But if you're going to have a public goods program it should be based on principles. The principles should be derived from reasonable public economic models. And from that I think many of the questions in terms of where money goes, how it's collected, and how it's spent can be derived.

Thank you very much.

COMMISSIONER LAURIE: Thank you, Mr. Ely.

Anybody else desire to offer comment? Mr. Miller.

MR. MILLER: Thank you for the opportunity to comment on the staff funding paper. And I apologize for the somewhat disjointed nature of the comments which follow, given the limited time we've had to review this, but I'll try and get just four quick points on the record here.

The first, I think, in terms of the staff's recommendations on load management programs, I think it's important before going much further that staff clarify what is meant by load management programs. What type of programs are being considered.

In particular the paper refers to strategies including new rate tariffs, which doesn't seem to me to be a program in the sense that energy efficiency programs or other public goods programs are a program. More that's a PUC activity of establishing rates.

So, it's hard to even evaluate how $50 million, as a round number, might be used without much more detailed understanding of what specifically is meant by load management programs.

On the overall funding level I'd like to recommend a -- strongly recommend that the Commission consider a two-stage process. First, asking the question of whether there's a continuing need for funding, for the programs at all, which the staff has begun to do. And appears to be likely to recommend that there was a continuing need for funding.

And then second, asking if there's a strong policy basis for recommending a different funding level than we currently have authorized though AB-1890. And this in particular, it seems to me that if the staff is not going to recommend a dramatically lower or higher funding level, that without it a very detailed and strong analysis supporting a different funding level, it's hard to come in and say, well, we think it should be 260 instead of 276.

Based on a quick review of factors, and given the political difficulty of recommending a different level, it seems to me to make sense that there should be a presumption if we're going to recommend it. Something similar to the current funding level, we should recommend the current funding level.

Third point is that I believe that legislative appropriation on anything close to what the staff appears to be leaning towards, a two-year or four-year funding basis will substantially reduce the program effectiveness, and the uncertainty and difficulty of relying on continuing legislative appropriations.

Therefore the report should not recommend a shift to legislative authorizations, regular legislative authorizations simply based on the presumption that that is what the Legislature will demand.

The report should instead recommend the best funding basis or approach to funding authorization for the programs, and perhaps note that if the Legislature will require a more frequent authorization, that these are the criteria that it should consider and the impacts on the programs that that will impose.

Final point is that the current policy goals discussion in the paper, as I read it, doesn't provide an adequate basis for making any recommendations or decisions at this point in time in its current form.

As it's presently structured it begins with a reference to policy goals, their underdevelopment by the staff that, if adopted, may influence the setting of funding levels. And so there's no firm basis for the discussion which follows.

The discussion which follows draws broadstroke conclusions about overall funding by program strategy, which don't really -- aren't consistent with the data and aren't adequately supported by the analysis.

So, I would suggest that either that

discussion needs to be substantially revised and approved, or simply deleted.

COMMISSIONER LAURIE: Thank you, Mr. Miller. I was able to follow that, so if that was disjointed that says something about my analytical processes.

(Laughter.)

MR. MILLER: I do, in emphasis of a disjointed nature, I do have one final comment.

(Laughter.)

MR. MILLER: Which is back to point three on the funding level. Which is that in terms of the decision whether to establish a funding level based on a percentage of the bill, or a specific mills per kilowatt hour, the Commission should consider the fact that CTC will be eliminated within a couple years for all utilities.

And if the surcharge is based on a percentage of the bill, then the total available funds would substantially drop after the CTC is eliminated, if it's based on the current bill levels.

COMMISSIONER LAURIE: Thank you.

MR. WILSON: Thank you, Commissioner

Laurie, Commissioner Pernell. I actually wasn't planning to make a statement today, but I do feel compelled to respond very briefly to a proposal put forward by Mr. Smith a little while ago.

This short response is we would be quite opposed to a proposal which would transfer a substantial portion of the funds collected by the local municipal utilities to statewide program.

I do think that, you know, there is a question which I think we should try to address which has to do with coordination of our activities. And at some level, especially when it comes to marketing and so forth, there needs to be a certain amount of -- a certain kind of relationship, I think, between what's going on at the local level and what's going on at the state level.

But the Legislature did recognize in AB-1890 that there are sort of a dual structure of regulation of utilities in California. They chose not to really overturn that in AB-1890. It continues. They respected the local agencies to regulate their own local utilities.

And while that doesn't always make for the most elegant or simplest model, it seems to work pretty well, and I think provides some advantages. And so consequently I just wanted to make sure that that point of view was expressed today.

Thanks.

COMMISSIONER LAURIE: Anybody else like to comment this morning? Yes, sir.

MR. VINE: Ed Vine, University of California. I just want to sort of reiterate one of my questions earlier what Peter Miller was saying, that if you're looking at the amount of money that should be spent for energy efficiency, it should really as best as possible be based on some technical analysis of how much energy savings are out there.

And I think if you don't have that data now as part of your report, perhaps you can be more prospective in the report, and outlining a task where that particular activity does get done in the near future. So that when legislatures or other people ask you, well, how much of this money will save energy, and what part of that is either the technical potential or your market potential, your program potential, you'll have an answer for that.

Because I think until you get to that you're going to be left with a lot of questions about how far down the road you are.

So I just want to leave you with that comment. Thank you.

COMMISSIONER LAURIE: Thank you, Mr Vine.

Yes, sir.

MR. HAWIGER: Could I add one comment --

COMMISSIONER LAURIE: Okay, wait. Anybody else who has not had a chance to speak yet? I'm sorry.

MR. HAWIGER: -- comment regarding funding mechanisms.

COMMISSIONER LAURIE: I think you had 42 seconds left on your --

(Laughter.)

MR. HAWIGER: Thank you very much, and I won't repeat my name, then. No. Marcel Hawiger with TURN. I'm sorry, I did neglect this specific issue regarding funding mechanisms.

As our comments indicate the ideal would be some equitable revenue collection versus benefit allocation. However, that is a complicated process.

And more to simplify we would certainly recommend that revenue collection be done on an energy usage basis, equal cents per kilowatt hour, equal cents per therm, as opposed to the current allocation which allocates a slightly greater percentage to residential customers of revenues than their percentage of energy use.

And certainly there are equity reasons -- and secondly, the bill we would recommend the charge be based on a volumetric basis within the bill, itself, also. But that allocation among customer classes is fundamental.

And there are good equity reasons for reducing the cost burden on residential and commercial customers, due to the fact that they've shouldered the disproportionate burden in the past.

Thank you.

COMMISSIONER LAURIE: Okay, thank you, Marcel.

Chris.

MR. CHOUTEAU: Chris Chouteau with PG&E. Just a quick comment. The current rate mechanism allocates a charge for public goods based on the cost burden by customer class. So, as was stated earlier by Frank Spasaro from SoCalGas, the current mechanism which is set in the CPUC rate setting mechanism and would continue to be set that way, fairly allocates based on the costs generated by that class of customers. Rather than a simple kilowatt hour charge.

And I would expect that in the future you would want to somehow fairly allocate these public benefits charges and certainly since one of the benefits that's generated by the energy efficiency programs is the reduction of costs, both supply and distribution costs, that it would be fair to continue to allocate the public goods charge based on the costs generated by that customer class.

The only other comment I have is just to agree with some comments that have been made earlier that four years is a minimum, and in fact, given our experience with the last four-year timetable, I think it may be less than a minimum if you want to really effectively mobilize the private sector in this.

Thanks.

COMMISSIONER LAURIE: Thank you, sir.

Mr. Nelson.

MR. NELSON: Thank you, Commissioner. This will just be one minute.

A further legal complication on the equity issue of public board versus investor-owned utilities. Yes, currently AB-1890 permits public boards to allocate the moneys collected for the public rate component to the programs as they choose fit.

In terms of what I term the special customer needs category, more commonly referred to as low income, but I like to be more expansive in referring to that rate component. One, I've supported in the past, will continue to recommend that this rate component be separated out for a variety of reasons.

Inequity, for those classes receiving different kinds of public services, in different territories, may be an even more legally complicating and challengeable factor than even the UDC challenges that are potentially there.

And lastly, I'll just point out I can't quantify it, but the utilities commission conclusion that a utilities company has a basic tension or conflict with its revenue requirements versus mounting aggressive energy efficiency programs, that tension does exist with municipal agencies, as well. And will be more fully resolved by having a different funding mechanism.

Thank you.

COMMISSIONER LAURIE: Thank you, Mr. Nelson. Anybody else? Yes, sir.

MR. RUFO: Thank you. Mike Rufo, Xenergy. A couple quick follow-up points. I think I only used two minutes last time, so with my remaining eight I could perhaps do Hamlet's --

COMMISSIONER LAURIE: No.

MR. RUFO: Okay.

(Laughter.)

MR. RUFO: Ed Vine made the bulk of my first point, the need for technical bottom-up analysis of the potential in this process. Related to that I think we also need in the staff papers a discussion of the market barriers that are in the market, and I think I slightly disagree with Mr. Ely on this that there is an economic model for what we're doing, particularly around market transformation. And there's plenty of literature out there. And I think some of that should be incorporated into the needs discussion.

Relates that I think the need in funding paper needs to include on the historic side documentation of the benefits in the programs. There's a lot of information in there documenting the cost of the programs. There's tables at the end on benefit/cost ratios.

But in order for this to be palatable and understandable and digestible by a variety of different audiences, we need to characterize the benefits in terms of at a minimum energy savings and converting those energy savings into things that people can relate to, like power plants and emissions, in ways that organizations like American Council for an Energy Efficient Economy have presented those analyses effectively at the federal level before.

So I think we need a package of the historic benefits and communicate those in a way that's going to be understandable to the Legislature.

And not just energy savings and pollution, but also there have been some market effects documented from these programs and those should also be captured in the historic analysis.

Thank you.

COMMISSIONER LAURIE: Thank you, sir.

Okay, anybody else?

Mr. Goldstone, is this part of staff's comments, or is this an independent --

MR. GOLDSTONE: This is the response to a couple comments I heard this morning.

Sy Goldstone, Energy Commission. I noticed several people referred to the need for a clear set of principles, an economic model. Mike Rufo just pointed out that there is a lot of literature on market transformation. I think he's right about that.

But what we haven't done is synthesize that literature in a way that clearly articulates principles that would allow us to establish a public policy and measure whether or not we're realizing objectives.

So I think that is an important point that I just want to agree with what other people have said this morning.

COMMISSIONER LAURIE: Okay, thank you.

We'll see you back here at 1:00.

(Whereupon, at 11:55 a.m., the workshop was adjourned, to reconvene at 1:00 p.m., this same day.)

AFTERNOON SESSION

1:08 p.m.

COMMISSIONER LAURIE: Sy. Lynn, did you want to make an announcement? Why don't you come up to the microphone so we can hear you.

MS. MARSHALL: A couple of people this morning raised the question of -- made the point that we need to be doing analysis of technical and cost effective potential. And we are working on this, looking at what's the current cost effective potential and doing a forecast of that, and looking at the implications of cutting funding to zero, and possibly holding funding constant.

And as we have results of that available we'll put it on our webpage for your comment.

Thank you.

MR. WILSON: To start the afternoon session we have Chuck Imbrecht, Chuck --

(Laughter.)

MR. WILSON: -- Goldman, sorry, past life, whom we asked to come and speak because of his extensive experience in California as well as other states. And he's going to give a short talk about the work that he's done in other states.

MR. GOLDMAN: Thanks, John. I'm not

sure how short the talk's going to be. Depends on when you cut me off.

MR. WILSON: Take as much time as you --

MR. GOLDMAN: Well, okay.

MR. WILSON: Maybe I shouldn't say that.

(Laughter.)

MR. GOLDMAN: What I was asked to do by John was to talk about administrative structure options for energy efficiency in other states.

I'm going to talk about how other states are approaching governance and administration of energy efficiency programs and what some of the implications might be for different models that are evolving in other states.

So there's going to be two focuses of the talk. I'll try to summarize what some of the other case studies of what other states are doing in terms of administration of energy efficiency programs.

And then just sort of step back from that and talk about some of the administrative and governing structures, three models that are sort of out there. And talk about some of the issues and tradeoffs that are involved in each of those models.

So that's where we're going over the next 25 minutes or so.

I'm not sure people can see this slide very well. For most of these slides I'll be talking about the full spectrum of public purpose programs. I'm going to just focus today on energy efficiency.

In Rhode Island -- and we're going to start from structures that basically keep more with the traditional model. The tradition model is defined as in most states, having a Public Utility Commission oversee electric utilities. And that's where we're starting from prior to restructuring in almost all states.

In Rhode Island basically the PUC oversees about $17 million a year public goods charge funds. And the basic approach that they're using is they have collaboratives that have evolved over the last four or five years that develop program designs and recommendations for funding allocation of budgets, which are submitted to the Commission for approval. And the utilities design and administer the programs. So that's basically how it works.

What's new in Rhode Island was they

expanded that to include renewables and they had a statewide collaborative group that developed a set of policies and programs for renewable energy.

I'm not going to spend a lot of time on some of these early ones, spend more time on some of the later states that are closer to what's being considered in California.

In New York what happened was there was not a statewide legislation, there was individual settlements with the investor-owned utilities in that state. And basically the Public Service Commission got the utilities to get out of the way, and turn over their energy efficiency funds to NYSERDA, which is a nonprofit state corporation that's been around for 15, 20 years in New York and has had a mandate to do work in lots of areas from R&D to energy efficiency to renewables.

And so essentially NYSERDA's mandate expanded significantly as a result of taking over the stewardship of about $100 million a year in public benefits funds. I think the energy efficiency portion of that is something on the order of 30 to 40 million. I may be wrong about that number, but something in that ballpark.

The key thing to note about NYSERDA is

how they're managing the energy efficiency program. What they basically had to do is they had to submit a plan to the Public Service Commission about the programs, the program designs, some of the rough budget allocations that was approved by the PSC for a three-year period. There's some requirement to evaluate the program after three years.

And what NYSERDA is doing is that they're basically putting out competitive solicitations to implement various types of program activities in various markets.

They also have the option, the utilities if they want to continue to run some of their programs they can make their case to NYSERDA. Information programs, things like that. And I think in a couple areas that's happening, but it's a pretty minor activity.

Also the utilities were still finishing up running some programs they've had from the old DSM bidding era, so there's some contracts that are sort of finishing up in New York.

But the key point to note is that NYSERDA did not have to use state procurement, and they are not civil service folks who work for

NYSERDA. So you have very flexible procurement in New York, and they were able to get up and running and hire lots of people in different markets to start their programs.

Wisconsin. Wisconsin has been involved in a pilot program in one utility service territory. That's the Wisconsin Public Service Corporation, which is the Green Bay area.

And in this case this utility basically said to the PSC, we don't want to do DSM anymore. We're tired of the stuff. It's too much hassle. So they basically cut a deal where they turned over $16.75 million for two years to be administered by the department of administration, which is essentially their energy office.

And that department of administration, DOA, put out a plan which was approved by the Public Service Commission, which talked about six or seven program areas, had budgets for those areas. Talked about how they were going to run things.

And the original concept was was that they were hoping that this would be the model. In Wisconsin they were going to pass -- they just passed legislation last week, statewide legislation, which I believe allocates about $78 million a year for energy efficiency, which will also be administered by the department of administration.

But this is where the two-year pilot just sort of tested out. And the reason I highlight this is because it seems like it's a little bit close to option C that the Energy Commission Staff has sort of talked about.

In Wisconsin the department of administration, the state energy office basically has a grand total of five staff. We're talking no staff. And they basically included -- and the legislation when they passed this said no more staff.

And so they basically concluded very early on that they'd have to hire it out. And so they basically, they're using state procurement in Wisconsin, they're all civil service, the five people. And they are -- last year they've hired six contractors to administer these pilot programs.

And they decided the funding allocations, the DOA, through some process, and they have a pretty large evaluation budget. They have budget for commercial industrial markets. They have a standard performance contract type program which is different than we have in California. Some residential programs, some marketing, advertising kind of programs.

I would not at all look at them as a model. The programs are running, but conceptually, which was -- administer the program, I think they have some lessons. Because they basically, you know, slogged through the state procurement in Wisconsin.

They issued RPs, they typically had anywhere from three to six bidders from each program area, and they selected them. They had a couple appeals, protests held things up for about six months in a couple of the markets. But they got better. And so now they have everybody on board.

The problem is they didn't have enough time. It too them probably a year to get everybody on board for a two-year pilot. And if the money is not spent it gets returned to the utility, to the ratepayers.

One of the interesting things in Wisconsin was that the utilities, because they're not restructuring Wisconsin, they basically said no utility affiliate can be the administrator. And they determined that any utility affiliate of any company anywhere in the U.S.

And so they eliminated a number of consulting firms that happen to be owned by utilities, like Xenergy.

(Laughter.)

MR. GOLDMAN: But it's a case in which the irony is that the PUC staff insisted on utility affiliate rules, and then the utilities insisted on no other utilities from another state being able to bid because the market wasn't open in Wisconsin.

Question, Commissioner?

MS. ten HOPE: I had a question. What kind of firms then did you see actually bidding and being successful?

MR. GOLDMAN: Consulting firms. All consulting. These are essentially, these are Hagler Bayee has the evaluation contract. Schiller & Associates is the administrator here. There's a company called -- Supply Systems is one of the winners. Delta Technologies. These are typical energy efficiency consulting firms that have been around for 10, 15 years in most cases. Not owned by utilities.

COMMISSIONER LAURIE: Did DOA develop a strategic plan, a plan to which the six areas responded to -- the DOA had --

COMMISSIONER LAURIE: Did they hire that out?

MR. GOLDMAN: -- as a state energy office, DOA had a set of existing state programs. A small number. And they tried to interface those programs to the extent they could with the programs they'd like to see in those markets from these funds, as well.

They put out a strategic plan. Had an extensive comment period on it. Got some comments on it. And it was looked at by the Public Service Commission. And so they did have that kind of process.

The Northwest. In the northwest what we've seen happen is one side of this approach that was put forward by the power plant council several years ago about how energy efficiency would continue in a restructured era has occurred.

The Northwest Energy Producers Alliance is alive and well. It's been going for two or three years now. It actually just got approval for the next round of funding, I think.

It's a very -- it's a nonprofit entity that was created three or four years ago. Very -- governance structure. Six investor-owned utility representatives, six public utility members, six public and six munis coops and six public members.

And they had to deal with representation and voting rights and things like that. Hired an executive director, and worked in a 15 staff. Very professional, not civil service, pretty highly paid. Very flexible procurement approaches.

And by all estimation out there, very very successful in terms of being able to move very quickly and put out solicitations and focus on market transformation. They're focused -- they had a very -- pretty focused effort in terms of doing upstream and downstream kind of market transformation programs.

The original idea of the northwest was interesting was that it was envisioned that the utilities would still offer lots of energy efficiency programs that were different from regional efforts. Information type programs, possibly rebate programs, things like that.

Very few utilities in the region have stepped up to the plate to actually offer that and get approval by their PUCs. But in the original northwest model it was envisioned that there would be different institutional arrangements for the region. And depending on the kind of program, kind of activity that would occur.

What really happened is all the utilities basically said we're happy with contributing to the alliance, DPA contributes about 50 percent of the funds, and there's not a lot of effort at the -- there's some exceptions, some of the local utilities, Seattle City and Light and Eugene Water and Power, but a lot of the investor-owned utilities are not doing that much. Portland General's --

So actually this thing might ultimately start to look -- it may take longer than people thought it would to actually happen, but you might see in the region some substantial efforts by some of the UDCs in a couple of the areas.

COMMISSIONER LAURIE: Chuck, is the Alliance a nonprofit corp?

MR. GOLDMAN: It's a nonprofit

corporation.

MR. ELY: Chuck, who is independent or who has been or who might be independent enough to evaluate and come to the conclusions that you did this is -- how do you get the -- you were far enough away from the process, never worked with them, of course, was not part of the process. Who evaluates this?

MR. GOLDMAN: I believe that as part of the three-year review they had an independent audit was done --

And lots of suggestions about how their board functioned, which our board certainly could learn from. And how --

(Laughter.)

MR. GOLDMAN: -- board and staff, and decision-making process. So they had some kind of audit, sort of a manager type audit. -- have programmatic type audit, but it was market. They said that -- all their evaluations are on their webpage and published. So you can get a sense of market progress in the different markets they're focusing in.

They certainly have some success stories.

They had to convince people and four legislators and BPA to continue.

MR. ELY: So the programmatic response of the moment, going independent --

MR. GOLDMAN: I think they're the PUCs mostly. I think they had to convince one legislature in one of the four states.

Question?

MS. CASSERES: Can you describe a little bit about how they get their funding? I know they get funding from a variety of sources and that might be relevant to this audience.

MR. GOLDMAN: Originally I believe -- are you talking about the Alliance now?

MS. CASSERES: Yeah, isn't --

MR. GOLDMAN: The Alliance got contributions, BPA basically provided lots of initial funding, over 50 percent. The state PUCs then approved in rate cases or various settlements funding from the other distribution companies to contribute to the -- they took a share based on some kind of formula. And I think the munis contributed in some fashion, as well. I don't know the details of how the funding allocation.

I actually believe that BPA's portion

represented most of the muni contribution. BPA was like 60 percent, 65. Peter may know more about this one than I do.

MS. CASSERES: There's no independent, like --

MR. GOLDMAN: They don't have an installation that takes the money. They basically get the money directly from the utilities and BPA. Because they're nonprofit it hasn't been a problem.

They spent a lot of time up front dealing with governance; the first three to six months were spent hashing out voting rights and bylaws and constitutions and things like that, about how they were going to deal with this.

Question in the back?

MS. GUILD: No. I was just going to clarify. My understanding is that the utilities were just basically matching what BPA did, between the IOUs and BPA.

MR. GOLDMAN: Okay, that would be better information than I have.

MR. MATTHEWS: Got two questions, Chuck. One, how long did it take, and were there any problems in setting up the nonprofit. And secondly, how did they resolve the tax issues that you fought.

MR. GOLDMAN: I was afraid you were going to say --

(Laughter.)

MR. GOLDMAN: You know, I don't know, I never asked Margie this question. The tax issue -- well, they went through one executive director before they got to Margie --

(Laughter.)

MR. GOLDMAN: The executive director did not last very long. There were -- I don't know, in relative terms compared to what I see in California, they did a heck of a job of setting it up.

There was a broader consensus among the parties about the vision and where they wanted to go, what the policy objectives were than what I've seen in the last two, three years.

COMMISSIONER LAURIE: What are the tax issues?

MR. GOLDMAN: Tax issues are there was an IRS ruling a number of years ago -- had to do with Edison, that basically says if you -- that the funds that you put out for incentive dollars were taxable, if a customer got those funds.

MR. MILLER: Peter Miller with NRDC. Utilities are transferring money to an organization, a private organization. The question is that income to that organization, you know, I guess if they're established as a nonprofit then there's no tax.

But the dollar, you know, the IRS will follow the dollars wherever they go. And there's questions about whether there's going to be tax on that, on each transaction.

The other question, too, was how long did it take the whole thing to get up and running. I think it was about nine months from the start of the negotiations to actually having an organization that was in place, something like that.

COMMISSIONER LAURIE: When you talk about tax on a transaction --

MR. GOLDMAN: Well, one important point an organization, the region benefitted very much because some of the important agencies -- people staff. The Power Planning Council, BPA lent the Alliance staff, start-up staff to get started before they -- and that really made a big difference as they started the hiring process.

MR. MILLER: The tax on the transaction question is for example, under the PUC's plan using -- if the PUC had hired a private administrator wouldn't the dollars then become taxable, because they were going to a private for-profit entity?

MR. GOLDMAN: That was a big issue.

MR. MILLER: So it was not clear?

COMMISSIONER LAURIE: I'll have to ask my folks because I don't understand that. I mean nonprofits do their -- hire contractors all the time. And their income is not considered taxable.

So I'm going to have to do some in-house examination.

COMMISSIONER PERNELL: Did you say this was for-profit entity?

MR. MILLER: Yeah, if the PUC had hired a for-profit administrator.

MR. GOLDMAN: California we were considering -- for profit, for nonprofit were eligible to bid. So in this issue was on the table, and I don't think we ever got it resolved legally with legal advice.

COMMISSIONER LAURIE: Okay, but if the

Alliance, being a nonprofit corp, then contracts for implementation, that should not affect the taxability of the funds flowing into the nonprofit corp.

MR. GOLDMAN: I don't think they had a problem with it. But I think it was something -- certainly I would suggest it's worth checking out and talking to Northwest Alliance about how they're dealing with the issue.

MR. ABELSON: Yeah, Chuck, David Abelson with the legal office. A couple of questions on your presentation today, if I could drop back to the NYSERDA model first, and then a little follow up on the Northwest Alliance model.

My understanding, and I have simply seen validations whether I'm correct or wrong, my understanding with regard to NYSERDA is a couple things. Number one, it was an institution that was already in existence, so it didn't need to be created.

Number two, I talked with their legal counsel last week, and my understanding is that the laws in New York expressly exempt the authority and other authorities from state contracting law. But that was because the laws in

New York do that.

MR. GOLDMAN: Right.

MR. ABELSON: So you can have the laws in California do that without creating a new entity, would that be your understanding as well? I mean basically --

MR. GOLDMAN: Yes, both of your statements I've been told are true.

MR. ABELSON: Now, moving on to the Northwest Alliance model, which I know nothing about --

MR. GOLDMAN: One point. If you see the RFPs that NYSERDA's put out, they're real good. Very flexible. It's the kind of procurement that we would really like, as the utilities often do in California, they're RFQs, they're really appropriate for the kind of programs that you're looking for. They have a lot of flexibility.

MR. ABELSON: Right. On the Northwest Alliance, first of all, as I understand it, it was an attempt to get together an interstate effort, more than one state?

MR. GOLDMAN: Right.

MR. ABELSON: Was there any entity that existed at the time that could have done that had they chosen to give it to that entity?

MR. GOLDMAN: The Power Planning Council did some of the planning functions, but never did some of the implementation functions.

Yes, there was clearly BPA. And, in fact, part of the reason probably the Alliance was formed was because people didn't want to keep it active.

But prior to the Alliance, BPA ran a whole suite of energy efficiency programs. They didn't tend to do the same kind of programs the Alliance has done. BPA's programs tend to be much more downstream customer rebate financial incentive type programs. And the Alliance is, with some exceptions, has tended to be more upstream. But the Alliance does offer a suite of information type programs, what they call infrastructure programs, with supporting local codes and standards and building officials and training. Things that BPA also used to do quite extensively.

MR. ABELSON: My two other related questions on the creation of the Alliance and what its obligations are, number one, was it in any sense created by the state -- I mean how did it come into existence? Just formed sui sponte, or was it directed by some sort of pact between the states?

MR. GOLDMAN: I don't believe it was the states, I believe it came out of the northwest -- well, it implicitly came out of the states. The Power Planning Council has representatives from the four states on their governing board.

And the Power Plant Council, through an extensive public input process, created a regional plan that had a vision for what public purpose programs would look like after restructuring. And so the Alliance was the first attempt to operationalize that and implement that vision.

But there was some buy-in by state representatives who sit on the Power Planning Council Board.

MR. ABELSON: And then my last question would be for the Alliance, to the extent that they, in fact, are not using state procurement practices, first of all they're multistate, so I'm not sure which procurement practice they would use. Is that anything that the Power Council or whoever it was that created them, expressly exempted them from? How did they come to be free from those obligations for public funds?

MR. GOLDMAN: I'm not sure, as a nonprofit corporation, that they ever even had to deal with that issue. Because the source of funds was never state funds.

They got money from BPA and they got rates from investor-owned utilities. So it never was even an issue. Shouldn't be an issue here.

Will?

MR. NELSON: Yeah, just a couple of funding level questions. That 65.5 million, that's annual?

MR. GOLDMAN: No, that's a three-year total.

MR. NELSON: That was for the three-year period?

MR. GOLDMAN: Yes. Roughly about -- this was the Power Planning Council recommendation, this is what they ultimately got for that three-year period, 65. It's about $20 million a year, $25 million a year.

MR. NELSON: But have they now jumped in to the $210 million per year up at the top?

MR. GOLDMAN: No. Again, this list --

MR. NELSON: That was a recommendation

that --

MR. GOLDMAN: Will, this was the plan, this has not happened. The only thing that's actually happened is the $65 million and I believe in Oregon recently there's been some recent decisions that will have some funding for utilities. But they have not come up with these kind of dollars.

MR. NELSON: And then just to check, in New York, it was $40 million, the energy efficiency portion roughly? I think that was the number I heard you say.

MR. GOLDMAN: That's what I said, but I'm not positive of that --

MR. NELSON: Okay.

MR. GOLDMAN: It was substantially less than what the utilities in New York were spending on DSM prior to restructuring. In New York, they took a significant hit, probably a 50 percent cut from what utilities spending was in like the 96/97 year, and again it was -- and it was a pretty hostile environment they were working in.

MR. NELSON: Thank you, and if I could just briefly, the question about taxation, you know, I think in theory, Commissioner Laurie, you're correct about how nonprofits can conduct themselves. But the IRS, anytime an entity starts handling large amounts of money they take a look at it.

And that's why there was uncertainty, I think, because of the amounts of money, and I believe from my following the issue with the CB it looked like it was headed towards, it was going to need an IRS ruling of some sort.

MR. GOLDMAN: There was --

MR. NELSON: Yeah, when you reach amounts of that level rulings are sought.

MR. GOLDMAN: Okay, the last state model list, Vermont, which is one that's just getting started. I've actually been working there helping them design and write their R&D, the higher energy efficiency utility.

Vermont's approach was actually passed in legislature, and they had a law that was just passed six months ago. It came out a memorandum of understanding between the 21 utilities. And their Department of Public Service, which is their CEC, their state energy office.

And the model in Vermont basically came out of the DPS plan two or three years ago called

Power To Save, which had a vision of how Vermont would function in a post restructured environment.

And it basically was this. The problem they have is 21 utilities. And you do have a couple big ones, it's very fragmented. They decided that they wanted to run seven core programs focusing mostly on lost opportunity type programs, new construction, equipment replacement, remodel, they have low income and dairy farms. They have equity programs and loss opportunity programs.

Basically said that the competitive market will take care of retrofit by and large. They have some funding allocated for retrofit market type stuff, but not huge.

So, if you look at their plans very very focused in terms of the kind of programs they want to run. And the basic models from governance point of view is they have got the contracts between the board and the utility.

The board has put out R&Ds to hire a fiscal agent which will be a one-person sort of, you know, accountant, who will collect money from the 21 utilities and pass the money to the energy efficiency utilities, and they're going to hire, the board's going to hire a contract administrator, one person, who will be the board's day-to-day person who will be the contract manager, essentially, between them and the energy efficiency utility.

Again, this is a small state, 500,000 people, and they have a little bit more flexibility than we have in California.

The RFP is a draft, it's available. It will probably be -- they hope to put it out within a couple weeks. And there's lots of -- the interesting thing about Vermont is they definitely learned some of the things from the mistakes that we made in California. And it's unclear they're going to be successful, as far as I'm concerned. They still haven't -- they're just learning about state procurement, you know, they assured us, we told them about this, sort of what was going to happen.

For example, there's some with the issue now, they just found out that, you know, one of the issues of the energy efficiency utility will basically in their model will be the administrator, the designer -- seven programs. So in Vermont they have no distinction between, like we did in California, the administration and implementation.

They want the energy efficiency utility to just worry about it. So they're not talking about bond implementers -- distinction. They want a very smart administrator. They're willing to have people -- the facilities need are subcontract, the stuff out, they can hire, it's their choice.

But what they're finding out is whether or not the implementers have to be hired through state procurement. Their hope was that it would be exempt, but they are going to find out pretty soon whether that's the case.

Scott.

MR. MATTHEWS: What benefits --

MR. GOLDMAN: Oh, it's a utility in Vermont because the utility is going to have a contract with the board and is going to be regulated, in quotes, by the board.

We asked them that question. That's just a name that they came up with, calling it energy efficiency utility. It's not a utility, I think in the way that we would think about it, but it's going to have a relation -- it's got a three-year contract with the board and that's their model. They're going to bid. You bid your administrative costs. And it will be a time and materials type contract. But it will be subject to a planning process, a public planning process that will be led by the Department of Public Service, the energy office.

Renee.

MS. GUILD: What is the corporate structure of the energy efficiency utility?

MR. GOLDMAN: The RFP basically allows different types of firms to bid, just like they did in California. That's about the corporate structure.

So, for-profit consulting firms could bid. The only -- it does say that the utilities in Vermont cannot bid to be the administrator. They're out. Utility affiliates could bid, but the district utility cannot bid.

The district utility can certainly bid to be implementers. And, in fact, as part of the deal that they cut they have something called MCDUs, these are coops and munis. Some of the munis and coops basically have a right of first refusal.

If the muni wants to run a program in their area, one of the seven core programs, they just say I want to run the program. And the utility's got to hire it. So, that's the deals to make this happen.

So it's very interesting, like a 50-page memorandum of understanding, and lots of intricacies in there that probably only needs in Vermont.

MR. NELSON: You were saying it's not resolved in the contract, these requirements will be between the utility and the invitation contractors?

MR. GOLDMAN: Right.

MR. NELSON: So if a utility --

MR. GOLDMAN: You'll see in the next two, three weeks, I think.

MR. NELSON: -- the energy the utilities bid, they have to come into the bid with all their contractors in place and all their program proposals in place, or do they come in just with basically the --

MR. GOLDMAN: With basically what?

MR. NELSON: Do they have to come in with their portfolio of programs and contractors in place and then bid to be the EE utility, or can they came in with basically just the shell on top and say they're going to contract out --

MR. GOLDMAN: The RFP says -- should read the RFP.

(Laughter.)

MR. GOLDMAN: The RFP says what the preference -- the board is on a very fast timetable, timeline. The utility will be hired by December of this year. They're supposed to start taking over by January of 2000.

So they are going to give preference to people who are ready to roll. Because on a very -- because the utilities are getting out of this business quickly.

MR. NELSON: How is the board constituted?

MR. GOLDMAN: This is a commission, Will.

MR. NELSON: That is the commission?

MR. GOLDMAN: That's a three-person commission --

MR. NELSON: Okay, thank you.

MR. GOLDMAN: -- appointed by the governor.

MR. NELSON: A special commission or --

MR. GOLDMAN: It's a PUC, like our PUC. They just have different names.

MR. NELSON: How many dollars?

MR. GOLDMAN: Well, you know, dollar amount's small enough. It was supposed to be between $13 and $16 million a year for five years. I just saw a trade press announcement that said $7.8 million the first year. I guess they had problems, I don't know why the funding got so much smaller. But it's down to 7.8 million, and it goes up to about 12 or 13 million over the next three or four years.

On a mills per kilowatt hour basis it's much higher than we have in California. Or a percent of revenues, it's probably 2 or 2.5 percent. But it's a small state.

Question?

MR. ABELSON: Yes, Chuck, is the difference, or at least one of the key differences between the Vermont model as you're describing it and the Wisconsin model as you mentioned it earlier, in the Wisconsin model it appears that basically the state energy office, they're referred to as the Department of Administration, hired six managers or administrators for six different program areas. Is Vermont simply hiring one overall utility administrator maybe because it's a small program, or just because the model's different?

MR. GOLDMAN: There's two big differences. That's one of them. The other difference is that in Wisconsin the contract between the state energy office and these contract managers, the PUC has a traditional role approving the plan.

Here the contractors, they envision to be between the board and the utility. They argued about this. The DPS said well, we'll issue the contract between us and the utility. Didn't work out that way. The way the MOU reads, the contract will be between their PUC and their utility, and you're right, Dave, they're hiring essentially one contract manager who will then hired lots of implementers and subcontractors, hopefully not through state procurement processes. That's their hope. But it may not -- we'll see if it works out that way.

Peter.

MR. MILLER: They both define the

specific program, -- very clearly defined programs?

MR. GOLDMAN: Yes, that's a huge difference compared to the problem we have in California. If they're going to be successful in Vermont it's because they have very well defined programs and areas. I urge you to read the power state planning. From my belief, it's the best thing that I've read. And it really tries to articulate what the role of public purpose programs is in the structured environment versus what you got -- market.

The Vermont? Called DPS' webpage, you can find it.

Okay, I think I've used up all of my time. I have much more slides about the models, so it's your choice, I could stop right now or I can continue.

COMMISSIONER LAURIE: Why don't you go ahead and take it to 2:00. And then we'll just bypass staff's presentation --

MR. GOLDMAN: Oh, you don't want to do that.

Okay, so the second part --

MR. GOLDBERG: Question on Vermont.

When you say there are a lot of well articulated programs there, can you describe that very briefly?

MR. GOLDMAN: Sure. The document, itself, Power To Save, is about 150-page document. It lays out the program design for the seven core areas. They have a low income program, very well defined. They have a program targeted at just dairy farms, which is another one of their segments in Vermont, that's called an equity type program.

They have a program for new construction and a program for equipment replacement. They give a program design, they give the budget, and they give an idea about what the objectives are, what the performance indicators are.

They lay out what our utilities do in California today in their planning, that level of specificity.

MR. GOLDBERG: And how do they articulate the difference between a restructured and a traditional utility environment?

MR. GOLDMAN: Well, there's a couple differences, I think. Today in Vermont the 21 utilities run some programs very unevenly. Okay, so one of the big problems in Vermont is they're going to consolidate that with one utility, have very high transaction costs at the board level overseeing 21 utilities, even though two utilities dominate the market.

The second difference is that utilities don't run all these programs today. Utilities today only run about one or two or three -- pilot testing. So these are programs that are -- they would consider to be more appropriate for what should be left to do in public purpose programs.

They either will be done because of equity considerations, because -- not going to hit low income people, not going to go in residential markets, or they're being done because they don't think that in terms of lost opportunities, new construction. But these are like time -- market-driven events, which are not necessarily susceptible to intervention by retail service companies.

Does that answer your question?

MR. GOLDBERG: Yes.

MR. GOLDMAN: Okay. You step back from these states, there are sort of three generic options that we will consider, -- utility administration, some type of nonprofit model, and some type of work with existing state agencies.

And so what I list here is a number of criteria objectively have in choosing administrative options. And I brought some of the stuff -- comes from the work in California that was done two or three years ago by a working group that Mike Messenger was involved in.

So I list the budget objectives here, criteria -- policy goals, the oversight, administrator -- and transition, sort of four general categories of how you want to think about choosing -- options.

And then I try to talk about some of the considerations of each of these three options. And in some cases you want to continue with utility administration you have -- the fact that many utilities have significant expertise and infrastructure. They have a working relationship with many upstream entities for many years.

Some of the big problems, utilities have to do with perceptions of conflict of interest and other market -- in the restructured world, but you often have very well developed regulatory oversight mechanisms, even though it can be pretty bureaucratic. We certainly have experienced that in California.

A lot of utilities have pretty well developed way to input the feedback from market stakeholders, but public outcomes may not be compatible with financial utility holds. And relative to the transition costs of probably the lowest, and you have to deal with transition to a new agency.

If you look at existing state agencies, from -- energy efficiency markets are typically not service territory defined, so from a sense of moving towards state and regional markets, having a state agency have oversight makes some sense.

You have to assess the ability of the agency to meet the energy efficiency policy goals. Most of the state agencies have been thrust into this role. In some cases have very significant staffing traits, or have historically had a much more limited vision.

In Wisconsin's case, for example, their agency ran low income programs, maybe even had some work in schools and hospitals, but really did not have any kind of experience running the set of programs that they're now taking responsibility for. Part of the reason they decided to out-source it was because they knew they were over their heads.

Yes, they just didn't have staff.

State agencies typically have low conflicts of interest potential when compared with private market. Public process may be well developed. And one of the things that -- like a suggestion, you need to look at the missions that the agency has, and their track record versus what you're asking them to do.

And one of my bugaboos is that I think state procurement roles, they make it more difficult to select best value type programs and proposals. And some states have more flexibility than others in that regard. And it's better if you can get some kind of exemption from that.

Transition issues can be significant. With nonprofits you spend a lot of time up front. If you're creating a new nonprofit institution. And I think it's possible to have an organization that is where the form structure and mission are really alive with policy goals. I think the Northwest is an example of that.

But you spend a lot of time on

governance and accountability issues. And we've been told that, you know, California was one of the real show-stoppers. That basically when you have the kind of money that we're talking about in California, legislatures are very very reluctant to trust that kind of funds to a nonprofit board of directors.

But they've been able to do that in the Northwest, and in New York they were able to do -- they have a nonprofit state corporation, so they were able to sort of get around it, deal with that issue, and it was an existing organization with a long track record. So they had some success there.

It's clear that a nonprofit will have the most flexibility at competitive procurement, but it's -- time and resources. Unless you have a multi-year commitment to this process without your time horizon, you need to think about that.

If you have the ability to hire and attract qualified staff. And one of the key issues that was really talked about publicly that I think is really critical is you have to assess where there's political will and support used to create a new institution. That really was the case in the Northwest. And I see in a lot of other states, even though there's a need, you know, where you have in some cases like I'm working in New Jersey and other places, Texas, there's a lot of conflict among the various groups. But there's no institution that, there's no will to create something new. So it's just not going to happen.

This is something Joe and I did in one of our papers that tries to think about how you -- this is very simplified and stylized. But when you think about -- the first thing to look at is you have to assess the utility's performance. If the utility's performance -- a lot of times utilities would either take themselves out of the running because they don't want to do it anymore, or their past performance is poor.

If their past performance is poor there's no reason to think it's going to get better in a restructured environment. The incentives are going to be even less.

You have to assess their current willingness and level of interest. If it's low, then you need to do an alternative. You need to think about the scope, implement the policies, whether you have a real problem with fragmented service territories or the scope of the utilities.

You need to think about mitigating the conflicts of interest and incentive that the utility has. If you conclude that those are significant problems, then you go through the duration of funding.

My own view is that you're looking at a very short time horizon, less than three years. It's not worth it to switch from the existing provider. If you're looking out over a longer period of time, five years or so, then it's worth -- then you can think about it, depending on your evaluation, of the performance of the utility, things like that, whether or not it makes sense to create some either new institution or to have some different kind of arrangement.

If you decide that the utility approach is no longer acceptable, then you have to look at what are your alternatives. And you have to look at the preexisting utility institutions, you have to look at their capability, their governance, their accountability, those kind of issues.

You know, state agencies are nonprofit. And the nonprofit approach, you have to decide whether or not you have what will support to create or modify a new institution.

If you decide that you've got a state agency you think is appropriate, you need to decide whether or not you have a manual of state procurement process in hiring procedures. Maybe the answer is yes to those things, you may want a state agency. If the answer is no, you may move for a nonprofit corporation.

If you conclude and you go through this process, and you look at your state agencies, you conclude that they're just not up to the task, well, you need to go back to looking at your utility and figure out ways to manage and deal with the conflicts, if you look through regulatory means.

Because I think all the times, sort of what we found out in California is oftentimes you're in the world of second-best solutions. The optimal approach may just not be workable. And so that's the way the world is.

So I think I'll stop there.

COMMISSIONER LAURIE: Thank you, Chuck, very much for your presentation. You're going to be around for awhile?

MR. GOLDMAN: Sure.

COMMISSIONER LAURIE: Staff.

MR. MESSENGER: We're ready to go.

MR. GOLDMAN: Dave, you had one question?

MR. ABELSON: Just a couple questions here just before you begin.

I'm struck by the fact of two things, Chuck, in your presentation about choices. One is that at the end you sort of presented a set of either/or choices, either you have a utility or you have a nonprofit or you have a state agency administering the program.

As I think you're aware, staff is at least preliminarily recommending that perhaps some combination gets you the optimal situation, depending on what you're talking about.

And I gather that Wisconsin has at least used some mix and match in the way they've approached it?

MR. GOLDMAN: Yeah, Dave, I think -- I did this two years ago, okay. This is the paper that Joe and I did, two years old. And I think you're right, I think that when I was thinking about this a couple years ago, people were not thinking about sufficient mix and matching and more creative solutions and things like that.

And I would agree with you that conceptually there's no reason why you have to take one and you pass it all. You could conceivably align program objectives and policy objectives with different type of organizations that make sense.

But oftentimes there just isn't the political will to work with these kind of complicated alternatives. It takes a lot of process and consensus to be able to do something more than just -- a lot of states don't want to spend the time that California spends on these things. They just want to -- they want to come up with an answer quickly. And that's just what they've done in a lot of places. They've either -- they just either give it to a state agency, gone to a nonprofit, or kept with the utility. Just don't want to mess around for the number of years that we've messed around with this issue.

MR. ABELSON: My final comment is actually just a word of caution in public perception. One of the representations was made with regard to the benefit of having a nonprofit as a primary administrator is the ability to get around state procurement rules which were viewed as being a problem.

And at least in the limited research that I've been able to do on this subject I've found two things. One, in the case of NYSERDA, they get around it because the state law told them they can get around it. So you can do that without creating a new nonprofit anytime.

Secondly, in other areas where there is no such state law, and I have some California Attorney General opinions in mind right now, at the moment, and a nonprofit was created ostensibly to get around. At least the attorney general's view as that's not going to work.

If there's some sort of a governance, if there's some sort of public funds involved, you can't just hand those over to a nonprofit in large sum and then say there will be no state procurement rules absent legislation which, in effect, says as much.

MR. GOLDMAN: These are rate funds, they're not public -- these are not tax.

MR. ABELSON: Well, that's the issue,

right.

MR. GOLDMAN: That's a big issue. Once you go down the view that they're public funds, I think you're right, you get in all kinds of problems.

MR. ELY: Chuck, you mentioned as a preface that you saw no reason why a distribution utility might not do better under restructuring. Why did you say that?

MR. GOLDMAN: Would do better --

MR. ELY: -- wouldn't do as well as they had previously?

MR. GOLDMAN: It would depend on their ratemaking and how they would set it. But from a corporate point of view, when you were doing resource acquisition like we were doing in the 80s and 90s, it was possible to offer incentives, it was possible to deal with regulatory -- gave utilities a reason to sort of procure energy efficiency resources.

In the market transformation type paradigm or you know, it's unclear why a utility would be motivated to do that. And in fact, what we've seen in lots of states, and one of the reasons that California wanted to consider independent RFP was because the financial incentives that they had during the transition period, there was a disincentive for them to reduce sales.

MR. McNULTY: Mark McNulty, representing San Diego Gas and Electric. The question I have, I'm looking at AB-1105 and I don't have a word counter on it, but it does look like it's a lot of words. And I know it took awhile for them to get AB-1105. That's the bill that created this process.

MR. GOLDMAN: Here in California?

MR. McNULTY: Yes.

MR. GOLDMAN: Okay, I'm not familiar with it.

MR. McNULTY: And I know that there were other bills out there that never made it. And I'm just curious based on your experience with all these other states, how big of a bill would be necessary to create $240 million worth of oversight and -- so that you could deal with all these problems that we're talking about.

MR. GOLDMAN: Vermont legislation is about 13 to 15 pages. Something like that. I don't think any other state is actually -- every other state -- states that have laws that just keep it with the utility, like Rhode Island and Massachusetts, the laws are much -- the laws tend to be much shorter.

Typically they transfer oversight to like in Massachusetts, their state energy office is now doing a much larger role for oversight than we had previously.

Most of these other cases they're not, we don't have state legislation. It's happened in the Northwest informally; it's happening in rate cases in New York. And in Wisconsin I haven't seen the legislation yet, to be honest.

Okay, thank you.

COMMISSIONER LAURIE: Thank you. Mr. Sloss.

MR. SLOSS: Thank you, Commissioner Laurie. Thank you, everybody, for being here today. Chuck has given you an excellent overview obviously of what's going on in the nation, and the key issues involved in state agencies versus nonprofits, so I'm not going to spend a lot of time going into pros and cons, but just trying to get into what the staff has done to come up with the proposal today for discussion.

This is a staff proposal that came out of a team, a staff team of several people from throughout the Commission, who took a look at several options with regard to how we might organize the administrative functions, post transition administrative functions.

COMMISSIONER LAURIE: Michael, I want to confirm for the record that this has not, as yet, been presented to the Committee.

MR. SLOSS: No, you're hearing it for the first time, also. The fact is, not every staff on the team even heard it before it got here.

The staff team worked for some time to first of all examine the functions that the administrative structure would have to carry out. And some of you who came to the October 1st staff workshop have already heard this.

We came up basically with the five functions shown over in this column from governance, program management implementation, delivery, program and market evaluation, independent review.

What isn't shown up there, which is on another chart that we did, were principles or criteria for determining which kind of an organization should carry out that part of the function. These lines are not intended to be precise demarcations between these functions. It's perfectly possible in many scenarios where the same entity could do multiple functions. So I want to make that clear.

Under governance, it was our view, as a staff, that inasmuch as this was a public goods program, under the direction of the Legislature, that the governance function would be carried out by a public agency.

We came up with two ideas. Idea number one, -- well, we came up with several options. The one that's shown up here is the California Energy Commission or what I've chosen to call an authority.

The idea of the authority is that a piece of legislation that would give an authority responsibility for the carrying out of this program. And at the same time might give them some creative mechanisms for dealing with this bugaboo we call the state procurement process.

The authority is, in my view, the prototype, if you will, or the template, would be financing authorities such as the California municipal utilities will establish the financing authority to run a specific project.

The board of the authority is the municipal utility board. In this case our view would be that the board of this authority would be the California Energy Commission, but only acting within the confines of their responsibilities as the authority.

The legislation that created this might also give you the opportunity to add other kinds of membership and representation to the authority. You wouldn't have to add staff just because of the authority, because the Commission Staff would act in that capacity.

Those are the two options.

The authority's responsibility would include hiring the administrators, approving budgets, doing the strategic plan for carrying out the responsibilities of the program. This probably, or in our vision, anyway, would be like a biennial planning process, every two years, to develop priorities for the coming two years. And to make the changes in the program that are necessary.

Program management or the administration function. We thought of several options for this, also. The key thing I will point out here is that we have private firms, universities, local governments, CEC, staff or certain things. I'll show you a chart in a minute that shows how the CEC staff fits into that.

You'll notice the utilities are not included. This was an issue we argued back and forth on and debated among ourselves. And the key question was can utilities be administrators when they have the dual objectives of selling power and saving power.

And by not including them up there, this is not to suggest that we've arrived at any conclusion. I've received two proposals on administrative structure since our workshop, one from PG&E, one from NRDC from Peter Miller.

Both of those have substantial roles for utilities and this kind of function. Maybe this helps us just kind of talk about where the utility role fits in within this function.

In our view when it comes to implementation and delivery, which would again -- these would be chosen by competition and it could include nonprofits as well as for-profit organizations, the implementation and delivery organizations would be selected by some sort of competition, except in those very special cases where we might want to have some research or other things done where we're allowed to sole source. But that, I would think, would be rather rare. The utilities definitely have a function in here as far as our staff view is concerned.

Program marketing and evaluation. This we would think would be done by organizations or an organization hired by the CEC and reporting to the CEC. This would be a competitive solicitation again. Some of this work also to be done by CEC Staff for those areas where it would not be appropriate for contracting out.

Independent review. It's our view that we've had lots of talk in these workshops about the role of the Legislature and how much to involve them. They, in our opinion, are going to want to be involved in this process. And we need some way to give them input into how the program is working, independent from what we are telling them, if we are the governance authority, from what we are telling them as the Energy Commission.

We would recommend a review panel appointed jointly by the Legislature and by the California Energy Commission that would maybe meet only once or twice a year, would review whatever research and data they needed to review, and would provide information biannually to the Legislature on the progress of the program. We would propose that the Energy Commission would do the same thing.

How might this look? For the sake of argument I used for administrative the same kind of breakdown basically that the CB has used, residential, nonresidential and new construction areas. It could be, as you notice in the writeup it says three to eight, and we can divide these markets and activities any possible way.

We recommended leaving the program market evaluations as a separate unit outside of those, that would be responsible for evaluating what is going on. The delivery agents obviously again would be selected by the program managers on the basis of some kind of solicitation process. Then the independent review panel reporting to the Legislature, obviously communicating with the Energy Commission on the progress of the programs, whether or not we're meeting objectives, whether we're carrying out the intent of the Legislature, and whether we're actually producing the public goods program.

Within the whole idea again I'll put out for the sake of discussion the state procurement process, we didn't view as a fatal flaw in our system. And I know all the problems everybody's had, I've had with that process.

We can identify those areas that need amending, changing, made more efficient. We can propose those to the legislative process, and there may be other things we can just do through interdepartmental negotiation with General Services and others before we get started.

And I went through that quickly because of time, but that is in essence the proposal. We did look at -- 1105 says we are to consider a nonprofit enterprise as the administrator. For much the same issues that Chuck put up with the creation of a nonprofit, the amount of time it might take, the issues of governance, and how that nonprofit would function and be directed, it was our view that that time and that cost outweighed the benefits that might come from the use of a nonprofit entity administrator.

COMMISSIONER LAURIE: Michael, who would you anticipate would quality for program management? And let me ask you specifically about utilities. Would you sense that statutorily or by the rules to be developed by the governing structure that the utilities would be barred by the rule, or would you develop criteria under which the utilities may or may not be qualified under?

MR. SLOSS: From my perspective, first through some sort of a process determine whether or not this issue of is there a conflict with the sale of kilowatt hours and the savings of kilowatt hours.

That may not be something that -- we may be worrying too much about that issue. If that's true, then obviously utilities could be part of the organizations that bid. What I would think would be criteria are the types of companies that would be bidding in here would be those that met some sort of criteria that we would establish, probably through a public process, in terms of the skills and abilities and knowledge of the organizations of the market or the area that we wanted them to manage.

And if utilities fit into that and if we resolve that other issue with them, then they would be part of the package.

COMMISSIONER LAURIE: Thank you.

MR. SLOSS: Lawyers aren't allowed to ask questions. Oh, I'm sorry. Bob, I let you, didn't I?

(Laughter.)

MR. SLOSS: Okay, Dave.

COMMISSIONER LAURIE: That rules out about three-quarters of the people in this room.

MR. ABELSON: I just have one question, Mike, on a word that happens to appear in number 5 on independent review, that at least when we presented it at the workshop on the first was not the word of choice.

You have the private panel, the independent panel composed of, the word here is stakeholders. And PIER, as you know, which I think was sort of the staff model we were looking at because we do have an independent panel that's evaluating PIER right now, is actually largely comprised of folks who are not stakeholders, in order to insure their independence.

I guess I'm just asking clarification. Is it staff's intention to create an independent panel that is comprised of stakeholders or to create an independent panel composed of members appointed by CEC and Legislature?

MR. SLOSS: Well, it was my thought that stakeholders would be on that panel because they would have a knowledge of what was going on.

I think we would just have to -- I agree, we did have the other concept defined before. And either one would work. I guess it's whom you want included in the process.

COMMISSIONER LAURIE: Let's go ahead and ask questions. What I'd like to do is have questions posed, rather than have a debate which we will have plenty of opportunity for at a later time. But have questions for clarification, I think, are appropriate.

At this time, Michael, why don't you just go ahead and do that.

MR. SLOSS: Well, Commissioner Laurie, too, I would invite folks who want to present a different template, too. You know, people have brought with them a different perspective and idea on how this should be organized, this would be a wonderful time to bring --

COMMISSIONER LAURIE: Yeah, that's next. And we will ask for that.

But I'd like to use the next few minutes for questions seeking clarification on staff's proposal.

MR. SLOSS: Sure.

COMMISSIONER LAURIE: Why don't you just go ahead and take it.

MR. SLOSS: Michael.

MR. MESSENGER: Have you had the time or do you envision having the time analyzing the CEC staff requirements for either the current proposal, the multiple administrators option C, or the nonprofit option B?

MR. SLOSS: No and yes. We have not done a specific analysis of how much staff it would take, or resources, period, to do either one. Obviously before there is actual -- the assumption that again our group made, or that I made, was that this, the administrative structure gets implemented through some sort of legislative process.

And prior to that process or legislation actually being drafted and submitted, we would have to make some very reasoned determinations what our resource requirements are, and what they organizational impact, if it's us, if it's the Energy Commission, and what the organizational impacts are on the Energy Commission.

MR. MESSENGER: I think staff has done a little work on a model similar to the one that you're presenting --

MR. SLOSS: Previously, right.

MR. SUGAR: -- done that previously, so we have some ideas. It's not clear to us how a nonprofit would function. And so depending on what Dave Abelson's review provides us, we may be able to make some kind of an estimate.

But that depends very much on what the Energy Commission's role will be vis-a-vis, you know, a single entity like a nonprofit.

MR. MESSENGER: And, Mike, the final really quick question is it seems to me for all these models it's pretty important to be very explicit about what we mean by an expedited procurement process. And what that would look like and the likelihood that the Legislature would accept that is, I guess, the second question.

Is that something that you envision in

the next 30 days, we're going to have to develop the specifics of what kind of an exemption, or what we mean by expedited approval. Or is that not as critical in your mind?

MR. SLOSS: We could certainly do that. And I had thought about that, that we could do that in the next month or so, is to develop a more efficient procurement process if you will.

The argument to date has been all state procurement process or no state procurement process. My personal view is that there, you know, as long as these are public goods funds and this, again for the sake of argument, the mere nomenclature of public goods, it gives me a little bother to say we're not going to have any procurement process that evaluates the effective use of these funds.

So, I mean from my perspective we will need some kind of a process, and I think we can do just what you said.

MR. MESSENGER: Thank you, that's all.

MR. SLOSS: And I think in the PIER program there was some renewables program, there was some work done in SB-90.

MR. ABELSON: I think it's fair to say

that we have extensive experience, both the good and the bad, of things that have been done to make PIER work better, some which has worked, and things that have been a problem in PIER, which need to be addressed further.

But I think we have a pretty good practical handle through PIER, and to a lesser degree, through the -- program of what both the benefits and the limitations are of the current process.

MR. NELSON: Will Nelson. In terms of program management currently there are 14 program elements defined through the PUC, oversight programs. So we could use that as one reference.

And let's say there were three or four or five other kind of front-runners that emerged, you look back. In terms of laying out a blueprint and a road map to who's going to do what, presuming again 2002 would be the -- early 2002 would be the period that the changes start occurring, what's your thinking about -- and I know you can't control the legislative process, but in terms of your planning process, when would the agency be ready to unveil the general blueprint, the general direction of which programs go where?

For instance, which programs might stay with UDCs for a year or two years. Which programs are going to be brought under state procurement. Which ones are going to be refashioned and put out for bid. Just a timeframe date.

MR. SLOSS: Well, this is committing other people in the organization, but what you just raised is the issue of -- this again focuses on a post transition type of administrative structure, and we still have a lot of detail in the transition period. And I think those kinds of questions need to be dealt with before the transition period gets too far along.

I think before we actually have a solid legislative package, for example, that would go forward to the Legislature, we would have to be able to answer all those questions.

We'd have to be able to answer basically what we're going to do with the programs in existence until the transition is over with. And who they go with and that sort of thing, wouldn't we?

MR. NELSON: Let me focus a little bit more. It's project management and staging. I think you can make -- I think it's possible to make some estimate of if some transfers were going to take place in early 2002, some portion of the blueprint has to be unveiled by second quarter, third quarter of 2000. Can you be of any help in that respect?

MR. SLOSS: It would have to be late in 2000. I actually have Marcel down first and -- okay, I'm sorry, you have the microphone, go ahead.

MR. McNULTY: Yeah, when you have the microphone you can start talking.

MR. SLOSS: I got 'cha. I actually wrote your name down.

(Laughter.)

MR. McNULTY: That's my theory. It's not an economic theory, it's --

(Laughter.)

MR. McNULTY: My name's Mark McNulty representing San Diego Gas and Electric. And my question's fairly quick and if you don't have an answer to it, that's fine.

In table 1 there are five areas. I was wondering what your percentage of the budget you envision, the staff envisions going to each of those areas?

Okay, let me ask the other question and then you can answer them whenever you feel like it, in the next month or so.

I want to follow up on what Mike asked, was since you don't have an estimate of how many sate employees you envision working on this, do you plan on having an estimate when your final report's due?

MR. SLOSS: That's very problematic if we would have a precise estimate by the time. The draft goes out in about two and a half weeks or so. And based upon where we are now, I doubt that we'll have a precise estimate of staff resources required.

MR. SUGAR: Yeah, it won't be precise. We'll have a general estimate. The legislation calls for us to estimate the resources required for the transition. And we will have an estimate of the resources required there.

We will have an estimate of the resources required for the recommended option, the administrative option, but the resource estimate that we would be starting at the beginning of 2002 is probably going to be up for review before the

2001, 2002 budget year.

I mean as we get a better idea of the way things are working, so that you know, we'll have one more shot at getting as close as we can.

MR. SLOSS: In answer to your first question I can only give you my impression, my opinion about proportions. That for number five, for example, would be a very small amount of money out of the total. That most of the funds will be going in at two and three would obviously receive the bulk of the funds.

Program and market evaluation, I believe, don't have a good sense of what that might be, but that would probably initially be a fair amount of money. But if we're talking whatever Mike had up there, 200 and some odd million dollars, it would be a real small --

MR. MESSENGER: Five or 10 percent I would say.

MR. SLOSS: Five percent.

MR. MESSENGER: Right.

MR. SLOSS: Max, is what I would say.

(Laughter.)

MR. HAWIGER: Marcel Hawiger on behalf of TURN.

Just a clarification on the independent review panel. I'm wondering where -- I just picked up today, I don't know if it was available before, the paper by Sy Goldstone regarding comments on the October -- from the previous workshop. And as part of this specific recommendation section it seems to indicate under point number 2, call for independent evaluation by the Commission.

And I'm not sure if that's as part of the independent review or if that's part of program and market evaluation.

MR. SLOSS: Dr. Goldstone would have to speak to that. From our standpoint the program evaluation, or this independent evaluation is done by an independent panel. And we have the issue of whether stakeholders are on that panel or not.

But that would be an independent panel that would make a independent submittal to the Legislature on how well the governance was going, and how well the programs were going.

And that is separate from this, although they obviously use the same information.

MR. HAWIGER: And that would be based on a biennial, some type of biannual --

MR. SLOSS: That's --

MR. HAWIGER: Okay.

MR. SLOSS: I see this group meeting once or twice a year, two times maximum, to get, you know, to get input and to tell the staff what more they need, or whatever.

MR. HAWIGER: So would Mr. Goldstone have any --

MR. GOLDSTONE: Yeah, I think I don't see any inconsistency. You're talking about --

MR. HAWIGER: On page 4, item 2, it says strengthen the California Energy Commission's ability to articulate before the fact guidelines and after the fact evaluation. This would be accomplished partly by assigning responsibility for independent evaluation.

MR. GOLDSTONE: Yeah. I think, yeah, this proposal would be to have the evaluation that's in that box over there on Mike's sides assigned to the Energy Commission.

And also have the Commission articulate some much more detailed guidelines, especially for market transformation programs. Those two would go hand-in-hand.

Does that answer your question?

MR. HAWIGER: Okay, so it's somewhat different from this box, but -- okay. That's a different --

MR. GOLDSTONE: Well, I don't know if it's different --

COMMISSIONER LAURIE: Wait, wait, wait, folks. Wait. Time out, please.

Sy, -- Mr. --

MR. GOLDSTONE: Yeah, box number 4 I'm talking about.

COMMISSIONER LAURIE: Sy, will you make it clear, please, that your proposal or your independent comments are not part of staff's proposal. Is that a correct statement, or is that not a correct statement?

MR. GOLDSTONE: I don't think it's part of the staff proposal that Mike's referring to, right. It came out of a different team. We're divided into three, four teams. But it's not an official -- so I would say it was developed a little bit independently, --

COMMISSIONER LAURIE: Well, wait a minute.

MR. GOLDSTONE: -- so there's a possibility --

COMMISSIONER LAURIE: We have a little --

MR. GOLDSTONE: Yeah.

COMMISSIONER LAURIE: -- in-house issue here.

MR. GOLDSTONE: Yeah.

(Laughter.)

MR. HAWIGER: That's fine. So, let's go on to the next question.

MR. GOLDSTONE: I was talking about box 4, not box 5, okay?

MR. HAWIGER: Okay.

MR. SLOSS: Okay, yeah, let's do that.

MR. VINE: Ed Vine, University of California. It looks like your independent review panel is very important for this whole model in terms of sort of accountability for the Energy Commission.

Why do you -- if it's to be independent why are the members going to be -- why does the Energy Commission have a role in appointing them?

MR. SLOSS: It was our view that there would be some method or some process of dividing up those appointments and selections between the Legislature and the California Energy Commission.

We didn't give any consideration to things like weighting, whether the Energy Commission would have two people on there and the Legislature would have nine, or whatever.

MR. VINE: Why should it have any role? Why not let the Legislature --

MR. SLOSS: I presume they could have them all. David, go ahead.

MR. ABELSON: The only other thing I could add to that is to the extent we had a model in mind in talking about it, when SB-90 was passed to implement PIER, and the renewables program, the Legislature very much wanted independent feedback at the end of the program. And they directed that such be created, that an independent panel be created.

But they did ask the Energy Commission, even though we are nominally administering, actually managing the PIER program in its entirety virtually, to actually pick the panel.

For those of you that are not aware, the panel is in existence. It was a combination of the California Council on Science and Technology in cooperation with Rand, finding people who have expertise with regard to public interest research programs but are not active participants in any way in the PIER program that are sitting on it.

So, I think it's possible conceptually to create an independent panel, have a governing entity like the Energy Commission nominally selected without creating a conflict. But I certainly understand the point you're raising.

MR. SLOSS: Excellent question. Marty Katz.

MR. KATZ: Marty Katz with SMUD.

Mike, how do you see the money flowing here? Is this going to be similar in your mind to help PIER operating? Who --

MR. SLOSS: Would you start that over again?

MR. KATZ: I'm sorry. How do you see the money flowing here? Do you see it similar as how PIER may be operating, which I'm not familiar with, in terms of who gets the money, how the contractors are paid, how the program managers are paid and so forth?

I think you're going to have a lot more financial transactions here than you have in the PIER program.

MR. SLOSS: Well, that may be. I'm not

sure exactly how this works. If, in fact, the Commission is the governance body, somehow we have to have the authority to actually allocate funds to contractors.

And I don't really know precisely how that would take place. Mike looked at it a little bit --

MR. MESSENGER: Yeah, I looked at it a little bit. I think ideally in the legislation we would say at whatever level of the funding is adopted the CEC would have either the annual or biennial process to set budgets for each of the boxes essentially. And say, okay, you know, independent review, you get $10 million a year; program market evaluation you get 5, whatever the numbers are. And that that would be their governing allocation until two years later.

But the CEC, itself, wouldn't be responsible for writing contracts essentially, we just propose an allocation of the legislative total to each of these five or six boxes as a result of either a planning process they'd had previous to that, or at the start they might just start with, you know, the existing level of allocation, for example, that the utilities currently have between residential and nonresidential and new constructions programs. And just use that as the proportions to set the program budgets.

MR. KATZ: Yeah, not such much, you know, -- not so much concern with how the budgets are set up, but this came up, you know, when they were doing the RFP at the CB, and you know, it's pretty complicated. I'm talking more about payments of, you know, various folks, and timely payments of you know, people out in the field and the implementers.

MR. SLOSS: We have Manuel and then Renee. And then Peter.

MR. ALVAREZ: Manuel Alvarez, Southern California Edison. I want to go back to a comment that you made about nonprofit option --

MR. SLOSS: Right.

MR. ALVAREZ: You somewhat dismissed it. And I guess what I heard you say is your concern with that was the up-front effort of governance and organization of the nonprofit. And I guess my question goes, you don't think that within the next two years those kinds of issues could be resolved?

MR. SLOSS: No, I think they could be resolved. What our group thought was is that the cost and time and effort and resources required to go through that process might not equal the benefits that we might achieve at the end, compared to what you could get done if we just went ahead with the existing organizations.

That was all that, you know, that analysis amounted to.

And if I gave the impression we dismissed the nonprofit, we didn't dismiss the nonprofit. We've gone over this option many times to try to figure out what it really means. We have a lot more to learn actually about if, in fact, we have to create a new one, what that means.

All nonprofits have to have a board. Who appoints the board? I mean that would all have to be done as part of some legislative process I presume. The selection of executive officers, the selection of financial officers.

All those types of functions that have to take place -- and the selection of staff and the training of staff, if that's necessary. And I can't answer all those questions explicitly.

MR. ALVAREZ: I guess, you know, I see this report going to the Legislature in January, early January. And then I guess some resolution coming out of there. And then you still have the rest of 2000 and 2001 to discuss those kinds of issues before you would get into another round of operation.

MR. SLOSS: Renee.

MS. GUILD: Are you advocating that it's a preferred option, or that you want to see it further developed?

MR. ALVAREZ: I guess when I heard Mike talk about the nonprofit, I felt that it was dismissed in the staff's recommendation, and he's telling me he didn't do that.

MR. SLOSS: We came forward with today, we had on October 1st staff workshop. We laid out the three, you know, A, B, C, and B was the nonprofit option. A was the PIER option, B was nonprofit, C was sort of this option.

Today for the sake of time and discussion we thought we would just put forward an option. But I certainly don't want to give the impression we dismissed the nonprofit.

I think Renee was next.

MS. GUILD: Renee Guild with EPRI. My question goes to your table 1, and the program management accountability. Two-part question. One is you've listed CEC as accountable for program management.

First of all, who at the CEC? Would that be Commissioners, or would that be staff?

And secondly, what accountabilities do you then foresee for the three to eight for profit and nonprofit organizations in program management? And what specific accountabilities would you attribute to them versus either the Commissioners or staff?

MR. SLOSS: Well, under -- if I understood your question, you were just looking at the second line or category one or category two, or both?

MS. GUILD: The second line in program management where on your table you've listed out the CEC being accountable for program management.

MR. SLOSS: Where I've included CEC staff?

MS. GUILD: No. The question is is it staff or is it Commissioners.

MR. SLOSS: Oh, I missed that, okay.

But this, obviously accountability starts with the Commission. And then whatever they delegate further to the staff is how that happens.

I see this as accountable to the Commission is what that means.

MS. GUILD: So then what role would the program administrator -- the nonprofit and for-profit organizations have accountability for?

MR. SLOSS: They would be responsible for the selection of the implementers, for determining the selection -- helping to determine, anyway, the selection process, carrying out the selection process, and overseeing the work of the program implementers.

COMMISSIONER LAURIE: But they would be accountable to the governing authority.

MR. SLOSS: Right, the governing authority.

MS. GUILD: And I guess it goes to who is ultimately accountable if someone chooses wrong.

COMMISSIONER LAURIE: It would be the governing authority. When the Legislature makes inquiry, the person or persons who will have the honor and privilege of making that appearance is the one that's going to be accountable.

MR. SLOSS: Right.

COMMISSIONER LAURIE: And I would think that's going to be the representative of the governing authority.

MR. SLOSS: Peter.

MR. MILLER: Yeah, I'm trying to make this a question, phrase it as a question, so I'm not good at jeopardy, so I'll raise my voice at the end so it's more of a --

(Laughter.)

MR. MILLER: -- concern, but I look at the flow chart, the org chart that you had up before, and then I look at the words and I see something different. And so it's sort of a confusion because it seems to me there's a layer between the oversight, the governance entity and the program managers that's missing. And that's the contract management layer. Drafting the RFPs to hire those program managers, and managing those contracts.

Is that missing?

MR. SLOSS: Well, the contract managers would be within here somewhere, wouldn't they?

MR. MILLER: No, those are the

contractors. They're under contract to the --
MR. SLOSS: Commission -- or to the governance authority.
MR. MILLER: So someone at the Commission has got to draft those RFPs.
MR. SLOSS: Right.
MR. MILLER: There's an extra box in there, right?
MR. SLOSS: Well, it's up in the CEC.
MR. MESSENGER: He sees it as part of the governance box. The CEC contract managers, let's say there was three contracts there with each of those three program managers, they'd be part of that governance box.
MR. ABELSON: In fact, when we first created these words, if you go back to the text, I think there's -- I think the word that's used for number one is governance and oversight.
There are multiple functions. I mean there's broad policy setting, and as defined here in the principal duties, hiring the administrator under this proposal is certainly one of those governance and oversight functions.
MR. MILLER: I guess the question, the concern goes to that function, because it -- I

mean just note in your paper that that's hard to draw bright lines, but that's squarely on top of that line? And it blurs the line particularly when you look at the additional appearances of CEC Staff on this table, which is both in the area of contract management, but also program management.

So you have CEC Staff moving through program management, being responsible and accountable to the CEC, itself. CEC Staff doing market program and market evaluation, responsible, accountable to the CEC. And appointing the independent review panel.

So it just, I mean I see, I guess, an infiltration or a blurring of CEC Staff throughout the org chart. And that's --

MR. SLOSS: You didn't raise your voice, though.

(Laughter.)

MR. MILLER: And that's what I'm wondering about?

(Laughter.)

MR. MILLER: How's that?

MR. SLOSS: In all of our deliberations we thought that there were possibilities for the CEC Staff to be involved in program management, for example. We might have a small program of some kind of emerging technology, or some kind of R&D type of activity that just wasn't the kind of thing that we were ready or thought appropriate to put out to bid or to contract. We might have the CEC Staff involved in that.

In terms of program management or program market evaluation, maybe the same thing, that there would be some activities that wouldn't necessarily get contracted out, and the CEC Staff would conduct those activities. Those would be minimal in the context of the overall program.

What I guess -- see I look at this box in terms of -- I mean that's the CEC. So, we would be issuing, if under this scheme, we would be issuing an RFP to select these four boxes or whatever it was we decide we're administrators.

And somewhere up in the CEC would be a staff or two that ultimately would have to administer those contracts.

But I don't see that as another level. That's part of -- I don't see it as a level. That's part of that governance function.

Chuck.

MR. GOLDMAN: I had a question about

that staff or two that's going to administer the contract. That seems to me -- in your third bullet you say approve program budgets submitted by function 2, which is a program manager.

Well, it's one thing if the governance agency approves the budget, that's what the PUC does today. But at least with the CBE envisioned and the Commission envisioned its independent administration, it envisioned contract managers who would be dealing on a day-to-day basis with the program managers in your model, and who would be paying, you know, who pays the invoices? You're talking about tens of millions of dollars here that are going to come to you over the course of a year, and going to ask to be paid for.

So it seems to me -- so the question I have really is, sort of a follow-on to Peter's, which is it's really governance and oversight. And I really think that you need to think through oversight in a very much more specific and detailed way.

And then the second point really is think about what's happened in other states. What's happened in other states is they've tried to clarify the roles of the state energy office.

In each case where you try to put yourself in too many boxes, somebody chops your head off.

That's what happened in Wisconsin. That's what's happened in Vermont. And it may happen here. And think about how your roles affect your mission.

MR. ABELSON: Well, just a comment from the standpoint of the point you're making to two things. Number one, we're concerned with not creating an accessibly complex set of layering. Where you can avoid the middleman, for lack of a better way to put it, efficiency dictates you should try to do that.

Number two, this agency is currently administering close to $200 million a year between the renewables program and the PIER program. Now, there are problems, I'm not gong to sit here and no one who's familiar with PIER would sit here and say that there aren't difficulties. The renewables program is going smoother in other ways.

But the question of our ability to handle, as an agency, basic invoicing issues with regard to hundreds of millions of dollars is simply not an issue that we're unable to deal with. Whether there's a better way to deal with it is another question.

MR. MILLER: But it's not -- ability, but for instance in the PIER program there's a staff of 50 people for managing $60 million in R&D contracts, doing contract management.

And so, and this program is four times as large. So, are we -- I mean my question is are you talking about 200 people there?

MR. ABELSON: No, this is --

MR. MILLER: And if so, shouldn't that be a box on the chart?

MR. SLOSS: No.

MR. ABELSON: The answer is no.

MR. MILLER: And if not, why not?

MR. SLOSS: The answer is --

MR. SUGAR: Two hundred people would be a big box on the chart, and we don't have one.

MR. SLOSS: But the answer is absolutely no. And the other thing is we already have programs --

MR. MILLER: Well, then why not?

MR. SLOSS: I --

MR. MILLER: Why is it not 200 people? That's what I don't understand.

MR. SLOSS: Well, first of all, I didn't look at governance as including things like approving every invoice. In my opinion I don't see why when you make this contract that these guys can't be approving these invoices. I don't understand why you can't do it. We already do that in some of our own public programs right now where we have general contractors who the hire subcontractors and go get the work done. They approve the invoices.

MR. MILLER: That's true also for the PIER program. And you still have 50 people.

MR. SLOSS: Well, but see from my standpoint that's one of the reasons why, while we're on the subject of this, that's one of the reasons why this body should be involved in some process of approving program budgets.

You approve an overall budget -- go ahead.

MR. MILLER: I just -- go ahead, I didn't mean to interrupt.

MR. SLOSS: No, that's all right.

MR. MILLER: I apologize.

MR. SLOSS: I just, that body, once the governance body approves an overall program budget, in my opinion I don't see why that can't be incorporated into the bid process where the administrator then picks up the responsibility for the expenditure of funds.

You have a program, a market evaluation independent review function, and maybe a department of finance fiscal audit or something like that, that makes sure that over time those people are doing the jobs that they're hired to do.

And we're not approving every invoice.

MS. ten HOPE: Peter, I think this is consciously a really different model than PIER. PIER put out a model where the Energy Commission was selecting individual projects.

And I think that staff has put forward a proposal that specifically says we're not going to do that kind of model. We're going to do a model where you have like master administrators that then go out to the project level. So --

MR. MILLER: I guess the problem I have is that that's clearly got something in mind, but it's not on paper. And so it's hard to understand. Specifically, I think you have to be very clear about how you see that working and why it's going to work and why it would be different.

MS. ten HOPE: We heard resources, we heard invoicing, other specifics that should be --

MR. MILLER: How would that process work, exactly what would the -- how would you have a program manager responsible for an average of $50 million in programs, at the few set of programs and multiple subcontractors and implementers. How would you manage that? Would you just give them free rein? Would they submit one invoice at the end of the year? What kind of performance it says what they operate under.

How would, you know, do they just say, give me $5 million a month? I mean I have no idea how you can manage that without, you know, substantial staff.

MR. GOLDMAN: These are all issues of the PUC that we confronted two years ago. And we got through part of the process, but we were looking at, the PUC trying to with four staff, five contractors. So, what you're suggesting, you can't hire individual project managers, there has to be a master contract. But it had to be a very specific role. We had to be able to think through where the flow of dollars was going to be.

Because the administrator has the -- the project manager has got all the money, or just the administrative portion of the money?

You've got to think through all those issues about where the dollars are passing through, who signs off on the checks, what the role of the contract manager, that staff person, those four or five people, those 200 people, or 50, whatever number you think you can sell, are going to do.

MR. SLOSS: It's either John Wilson or Chris.

MR. MESSENGER: Or the guy with the mike.

COMMISSIONER LAURIE: Chris, why don't you ask your question and then we'll go to John for last. It will be the last question. At 2:45 we're going to cut off this discussion and go to -- we want to provide opportunities for your proposals.

MR. CHOUTEAU: Chris Chouteau, PG&E. It just seems to me that there's a missing box here. And when we met last time we talked about the bright lines between some of these, and for me there's a very clear bright line between governance and some of these other functions.

And really there's a missing box here, which is I don't know what to call it. You call it administration, but you've combined it with governance, and you're calling it oversight, I think.

But if you really talk about letting massive contracts, even with administrators who have broad responsibilities, that's an administrative function. And it's not a small one.

And it creates, if you don't show it on this sheet, then it creates confusion about where that's happening. And if you do show it, I think it will be clear that there is another step in this process, which we don't have right now. Which you would be inserting, which is we have governance and we have people who runs programs. But we don't have an intermediate step.

So I think you need to show that if that's what you're proposing. Or be very explicit that you're combining that as governance, but I personally don't think it fits under the title of governance.

MR. SLOSS: Okay.

MR. WILSON: I'm also hung up on the phrase expedited state procurement, having spent much of my time for the last two years in the PIER program and it does seem to me to be a bit of an oxymoron.

And despite the fact that we had SB-90, we got some help in the PIER program with that. I'm still really concerned that the staff proposal puts a lot of confidence in being able to do that. And I, again, based on my experience, don't have that belief.

I wonder if the staff has talked to the CB members or the CPUC Staff about the RFP process that they worked on a year ago, and talked in some detail about the problems that they faced and the kinds of solutions they were trying to come up with. Something that will give us more specific reason for believing that we could have an expedited state procurement.

MR. SLOSS: I have not.

MR. SUGAR: CB made a presentation to the Committee. I haven't spoken, you know, individually to Chuck or others.

MR. WILSON: Well, and the message we got in that meeting was state procurement's tough.

And the RFP process didn't work because of a lot of those detail problems.

MR. SUGAR: The message I got speaking with -- there are problems. The CPUC is not a contract-driven organization. The CPUC is a regulatory organization.

We have done quite a bit of contracting. There are areas in which contracting can be improved. One of the issues that has come up, I think, in our discussion with utilities, and one of the points that Peter made, he raised the issue of incentives.

And I think that reflects an approach which is more closely related to a regulatory function than to a contract type function. I mean normally contracts, while it would be possible for us to structure contracts with incentives, normally the incentive in the contract is to get paid. And there are requirements or expectations of what the contractor will do. And if the contractor does those things, he or she gets paid. What they are paid includes what would now be considered incentives for shareholders because when the contract is bid, the bidder includes the profit that they need to be in business.

The state has used a variety of contractual methods. I've been involved in other agencies in contracting methods which haven't been used here, but have been used for very large, extremely complicated health care contracting purposes.

So, the contracts here we have used contracts extensively in our division that rely on work orders, where effectively we have a master contract, and then as work needs to be done, there are agreements with the contractor as to how that would be done.

With complex projects that require imagination it's possible to use two-step contracting procedures where effectively you prequalify those who would participate in the contracting. And then work with the contractors to come up with approaches that then can be compared and scored. I think, PIER, in fact, with its -- I can never get Phil Meisner's program's name right, but it's kind of a negotiated contracting system going. It follows along those lines.

I've worked on the, in fact led the effort to get the sole source regulations for the

PIER program through and implemented. There are issues anytime we try to get away from the standard contracting system.

And these issues can be resolved. The goal of the process being that public funds are protected to insure that. And there are those that may argue these aren't public funds, but the goal of the process is to insure that the people who are paying the money get good value and the expected products for what they are paying.

And it is possible to structure contracting processes so that one is focusing more on outcomes than on individual, you know, procedures, where, you know, someone in the Energy Commission has to look at every single invoice.

Now, some of that has to be written into legislation to provide some flexibility, but that can be done and still protect the public interest and insure that it's possible to operate a program to everyone's benefit.

COMMISSIONER LAURIE: Thank you, John. I'm going to put that discussion off now. At this time what the Committee's interested in hearing from you is your own preferences, individually, in your capacity as a representative of an entity or an agency.

So there will be a draft report coming out in a matter of weeks. This is your opportunity to provide input into the Committee for that purpose.

We'd like to use the next hour to accomplish that.

We have a couple blue cards. I would ask you to utilize the blue card system. Don't worry about it if you don't. But I currently have one blue card, and if that's all the input we have, we're going to be very disappointed.

Mr. Goldberg.

MR. GOLDBERG: Lenny Goldberg. I've been with the Davis Energy Task Force in which we were looking at opportunities for energy efficiency and adapted to restructuring in the City of Davis.

I also lobby for TURN, and Marcel Hawiger here will make the main comments for TURN today, but I will make a couple of comments just on the legislative process, since I spend a lot of time in the Legislature.

Which is that I think that the -- in these proposals the Legislature will be jealous of their prerogatives, as always. And then that's balanced with the administration, but it's certainly regular reporting to the utilities committees and presumably the resources committee and the budget process, $240 million is a substantial amount of money.

I would also say that we're going to need to have, coming out of this process, some level of consensus. I think there are a lot of people across the street who see, despite the comments earlier, that $240 million required to be paid in rates is, as a mandatory requirement, has been called at least by some, a tax.

Certainly in the public purpose programs that we were trying to reestablish in the Legislature for gas this year, it required a two-thirds vote of the Legislature to enact the public purpose programs, which is somewhat at odds in the past with some majority vote requirements that existed with regard to whether this is a tax or a fee.

But as a tax, it basically says there's going to have to extend these programs significantly, through 2006 if that's the chosen year. There will have to be a substantial level of consensus among participants as to what its structure is going to look like, how those benefits are going to be apportioned, and what the nature of the payments are.

I want to comment, I missed this morning, but make one comment as the Davis Energy Task Force we were looking at in our city how to adapt to restructuring.

We had a small subcommittee on energy efficiency, which included staff from the Energy Commission, a person who lives in the City of Davis, Bill Knox. Dick Born of the Davis Energy Group, who is very knowledgeable in implementation of energy efficiency, and myself who is probably more knowledgeable on the political side than the technical side.

One of the things we saw was market failure free in the residential and small business sector. I don't know, did you discuss some of that this morning, and that a focus on peak load reduction gives you a much greater bang for the buck when you're looking at relatively high cost peak electricity.

We were concerned as we looked at a number of years to say our load profiles in the valley, anywhere in the valley, but in Davis are -- is much less -- is much worse with regard to peak usage than the way we are currently averaged in.

And as electric restructuring plays out, the extent to which we will start to separate out those loads, coastal versus valley, there will be significant disadvantages to peak power costs with regard to the valley.

And so that when we look at designing a residential program, it's one that looks at peak load reductions as well as baseload and other energy efficiency reductions.

And if you take the dollar value of that at 15 cents a kilowatt hour versus 2.5 cents a kilowatt hour, the dollar value is going to be substantially more.

So then we looked towards implementation. I think the piece of this chart, since Marcel is going to talk for TURN on the broader perspective, the piece of this chart that we were concerned about is how do you get the program down to residential and small business ratepayers.

And we sort of sided with, I don't know

if you've heard from Rita Norton from the City of San Jose, but sort of Chula Vista and a sort of budding group of municipalities, which I think would also include some municipal utility districts, and counties who are concerned about public involvement at the local level.

That one of the issues about contracting and procurement may be that we, in Davis, paying 300,000 relatively small amount in ratepayer dollars to this energy efficiency program each year, are seeing nothing back directly.

And that some portion of that, were it to go to the City of Davis to do a program, too, in our case probably change out a lot of old air conditioners, which is both peak load reduction and substantial energy efficiency.

Or also looking at the multifamily housing sector, in which there is significant market failure, where the landlord doesn't have an incentive for energy efficiency because the tenant has the meter. The tenant, obviously, is not going to invest in energy efficiency.

An old problem, but one that we feel has been inadequately addressed in the energy efficiency programs.

So with regard to administration, what, you know, I think we are speaking here to, or what I would speak to is the involvement of local public agencies as a major part of the delivery system for residential and small business.

That doesn't mean that the cities are going to hire their energy efficiency staff to go out and implement the programs. It may be contracts with ESCOs, it may be arrangements with the utilities. We certainly see a lot of financing opportunities here. Those may be statewide financing opportunities in terms of being able to finance the change-out of an air conditioner at a reasonable rate, for example.

But I want to speak for some clarity about local government involvement. Cities, counties, special districts who can get, in conjunction with getting to the residential and small business sector.

And when we talk about a consensus program giving people some connection between paying these mills on their rates and getting back some benefits for it. Because I think to extend this program we're really going to need some public visibility with regard to how the program benefits residential and small business customers.

Thank you.

COMMISSIONER LAURIE: Thank you, Mr. Goldberg.

Again, I should note for the record that NRDC and PG&E have submitted written comments. Written comments would be appreciated again by the end of this week if any of you have them.

Mr. Miller.

MR. MILLER: I have some written comments, I'll put them on the website tomorrow. But if anybody would like a copy now there's some on the front desk.

Peter Miller with the National Resources Defense Council. I take to heart Lenny's concern and pointing out the need for consensus. And I think one of my principal goals in submitting the following, the -- going to describe, was an attempt to try and reach some consensus, because we will need that kind of agreement in order to move forward with the funding extension and what we need to do to keep these programs running.

The administrative option that I'm proposing is an attempt to retain the functioning aspects of the current framework, while also making a substantial shift in oversight from the PUC to the CEC.

This option also provides an opportunity to test alternative administrative approaches, particularly those that seem to be preferred by the CEC Staff, by transferring responsibility for program management for a single program or a limited set of programs to a private program manager, either a nonprofit or for-profit, or a public entity such as local government, operating under a contract to the CEC.

I call it the evolutionary approach because it has the advantage of maintaining a large share of the existing framework, those elements that work, while allowing for continuing evolution of the program in the overall administrative framework.

The governance function would be primarily shifted to the Energy Commission from the PUC. The CEC would have responsibility for overall program guidance, determination of policy guidance and program objectives.

Program planning would occur at the CEC. It would be a biennial process. Staff has already mentioned, I think, a two-year process make sense.

And it would begin with adoption of policy goals and guidelines by the Commission at the Commission level.

Program administrators or managers would then file two-year program plans and budget recommendations. Parties would have an opportunity to comment on that, provide input, including CEC Staff. And the Commission would review parties' comments, the plans, receive public input and modify them as needed to formulate off them. Including any performance incentives that were incorporated in the overall administrative framework.

There would be an annual performance review that would determine any appropriate performance incentives.

The oversight role of the PUC would be limited to incorporating the funding levels and the budget allocations that were determined here at the CEC into rates, and to performing an audit function to insure that the collections in rates and the disbursements to the various accounts were consistent with CEC decisions.

Program management would continue to largely reside with utilities. They would be responsible for program planning, design and development, contract management with implementers and related market research measurement and program evaluation for those programs that were under their aegis.

The CEC would assume management responsibility for single program or limited set of programs. And the determination of which programs would be based on a set of predetermined set of criteria including, for example, that they were statewide programs, didn't require local field staff. They were consistent, those programs were consistent with the CP -- CEC's expertise and responsibilities.

My point here is not to propose specific criteria, but to merely note that those criteria would need to be developed, should be developed. They would result in programs such as the third party initiative programs, a loan program or codes and standards support being transferred to the CEC's responsibility through contract with program manager.

Project and limitation would be largely unchanged. It would continue to be out-sourced for the most part to third-party implementers.

Measurement assessment evaluation would be divided up among the various parties, so that CEC would be responsible for broad market assessments, and evaluation of market functioning.

Market characterizations, utilities and program managers would be responsible for evaluation, direct program evaluation, provide close feedback to their program managers and designers and planners.

And there would, of course, be a independent review panel that is responsible for reporting to the Legislature as it is in the PIER program.

I think it's important, having served now on both the PIER review panel and the CBEE, I think it's essential that that entity be clearly defined and its role be clearly specified.

I think that's something that the staff draft doesn't yet do clearly enough, and needs to be thought through. But I think there is a role for an independent panel.

In terms of the fiscal review, the fiscal audit, that would be the responsibility of the PUC, although clearly if the Department of Finance felt that there was a role there, that would be their prerogative.

That's the skeleton of the proposal, and I'd be glad to answer any questions.

COMMISSIONER LAURIE: Mr. Miller, do you distinguish between an independent review panel and an advisory panel?

MR. MILLER: Yes. I think that's an essential part of the clarification of the responsibilities of that body.

COMMISSIONER LAURIE: Thank you. Commissioner Pernell, did you have any questions?

COMMISSIONER PERNELL: Yeah, I have a couple, I guess. So on the chart that staff put up, we would be under governance, you got us under governance, but yet you have the CPUC setting the budget and doing the auditing, and then you have the utilities doing basically the same thing.

So, I'm trying to find where on this chart we fit.

MR. MILLER: The CEC would be the responsible for -- principally responsible for governance and oversight.

COMMISSIONER PERNELL: But governance also includes --

MR. MILLER: I would try and draw a

bright line, brightly as possible, above the program managers and below the governance agency. And the CEC would be the entity responsible for governance and oversight.

And that would be 99 percent of its job. And it would a Committee level responsibility for approval of program plans, program budgets, and oversight of the program managers.

And staff would provide input, along with other parties, into those plans and into program planning and budgeting. But it would be a Commission level responsibility for making the decisions, making the hard decisions of who gets what, and insuring that there's adequate oversight over the program managers and, by extension, the implementers.

COMMISSIONER PERNELL: Right, and just a final question is as we go through this we're mindful of the legislation which says that we will basically come up with a -- I think staff did a range of what the budget would be.

And yet you're proposal kind of takes that and puts it in the hands of the PUC.

MR. MILLER: Let me clarify that, because that's, you know, the PUC would be responsible for merely implementing the CEC's decision for the most part. They would -- they would continue to have authority over rates, and therefore I think that it would be appropriate that they -- and I'm not a PUC attorney -- but I assume that they would have to direct the utilities to adjust the rates as necessary to make sure that the collections were appropriate to costs, various classes.

I don't know how big of a role that would be. But there wouldn't be discretion in terms of determination of the overall budget. Their role would be to --

COMMISSIONER PERNELL: Okay, I just kind of misunderstood what you were saying.

COMMISSIONER LAURIE: Okay, thank you.

MR. MESSENGER: Just one question of clarification. As I understand your proposal, the governance body would decide whether or not and how big or how small this CEC program management level might be. They could decide, for example, to make it $1 million a year one year, and $10 million the next. And then they would sort of review that to see how well that experiment worked, is that part of the intent of your proposal?

MR. MILLER: Yes.

MR. MESSENGER: They would make a judgment, let's say the first year 90 percent would go to the utility and 10 percent to the CEC Staff, and then they can change that percentage over time depending on experience?

MR. MILLER: Yeah.

MR. MESSENGER: Okay.

MS. ten HOPE: Under the program management role you see the utilities continuing to run the program by service territory? And there wouldn't be competition among that role, so that would be basically staying as it is right now, with whatever pilot program would be run by the Energy Commission, is that right?

MR. MILLER: Well, it's generally true, but if you look at the current programs there's a lot of statewide efforts being done collaboratively among the utilities, and I would expect and encourage that process to continue and to expand.

So that those programs which it's appropriate to have a statewide program should be done as collaboratively as possible with seamless implementation, seamless administration across the service territory boundaries.

MS. ten HOPE: And then right now utilities get performance incentives. Would you see that continuing under a PUC arena, or it would be a contract relationship with the Energy Commission?

MR. MILLER: It would be through a regulatory framework. So the CEC would establish the mechanism, would determine in level of incentives that were due, but they wouldn't be -- the utility compensation wouldn't go through a contract.

There would be no need, and in fact it would be much easier to avoid. And the intent was to avoid that whole development of a contract process. Utilities would continue to be, and are continuing to be regulated entities who collect the funds from rates and the appropriate --

MS. ten HOPE: But that would have to happen in a PUC forum?

MR. MILLER: No, no, the CEC would determine the level of incentives, the PUC would merely insure that that level was direct to the shareholders versus the amount that would go into program administration.

But the determination that's arrived at here was implemented through their collections and disbursements.

MS. ten HOPE: It would take some coordination, I think, --

MR. MILLER: It would definitely take coordination But I think that it's clarifying that the growth and responsibilities, and I think the two agencies are capable of it.

COMMISSIONER LAURIE: Mr. Abelson.

MR. ABELSON: Yes, first of all, just a personal note of thanks on your written comments. I did have a chance to look them over briefly this morning.

It seems to me that at the core, the difference between your proposal and what staff is floating at the moment is one of emphasis primarily in the management function, function number 2.

And the way I see the difference, and I'd like you to tell me whether I'm wrong about this or not, is that staff has elected not to leave the utilities out entirely as a nonprofit management schemewide, but has made them one of a number of perhaps co-equal or roughly co-equal managers, depending on areas where they may have particular expertise and nonconflicts of interest.

Your proposal seems to have the utilities primarily, and my question is for how long, the managers with a few what I believe you called, I'm not sure if you used the word pilot, exemptions that the Energy Commission might want to try.

And I guess my question to you is twofold. Number one, would you speak to at least briefly the whole conflict of interest perception, which is one of the reasons that many people feel there should be no role at all for the utilities in management. And number two, would you speak to the issue of whether or not your proposal envisions the utilities in this dominant role for as long as the next set of legislation remains in place. Or is that something that phases down as the pilots prove to be successful?

MR. MILLER: Let me first comment on the conflict of interest question. NRDC is concerned about utility incentives. And we participated in proceedings with the PUC on performance based ratemaking for each of the utilities, and strongly -- taken a strong position that their interests should be consistent with lowering the overall cost of service, not with lower rates through increased sales.

And we will continue to do that regardless of whether the utilities continue as administrators, because we think that their incentives go far beyond the narrow issue of, you know, immediate administration of energy efficiency programs. There are much broader concerns there.

On the narrow issue of program administration, utilities have had, under the rate freeze, an incentive to increase sales to insure the collection of CTC. And we haven't seen any diminution of effort as a result of that conflict. We haven't -- we're in touch with utility program managers and staff on various proceedings in various forms, and we haven't seen that be a problem.

And we think that that's something that needs to be watched, but we don't feel that that conflict is evident to the degree that it should be -- the utilities should be taken out of the role. Particularly, given the difficulty of establishing alternate paradigms.

MR. ABELSON: My second question was did you see this -- now you have them as the primary, I would say, manager --

MR. MILLER: Yes.

MR. ABELSON: Do you see that evolving over the period of the next chunk of the program?

MR. MILLER: I'm focused on the near term, and if we can get, you know, through the next couple years, let's see how we're doing. Programs have evolved and continue to evolve for many years since they've been in place.

And I expect that evolution to continue. The direction it will continue in, I would not predict at this point in time. Let's hope that, you know, I can only encourage you to adopt my model and hope that the pilot efforts, I don't really know why I call them pilot, because it depends on the program, are successful.

And if they are, then certainly the possibility of expanding that is something that should be considered.

COMMISSIONER LAURIE: Thank you, Mr. Miller. Your comments are appreciated.

Mr. Hawiger.

MR. HAWIGER: Thank you very much, Commissioners. My comments may be a little more scattered than this morning. This afternoon session has sparked a lot more ideas for thought.

Initially -- I'm Marcel Hawiger for TURN, excuse me.

TURN was quite pleased to see the staff report and recommendation on the administrative structure. Our primary focus for a number of years has been that the utilities should not be in the administration and program management role for energy efficiency programs. They certainly have the expertise and should have the right to have a role in program implementation and delivery, but we believe that the incentives are such that the counter-incentives utilities have to promote energy sales, make their role in managing energy efficiency highly problematic.

And I might as well start at the end there with Mr. Miller's comments regarding those incentives. Certainly I appreciate and TURN supports NRDC's position in the PBR proceedings to make the framework, PBR framework such as not to provide a counter-incentive for energy efficiency.

However, the fact is that at least two

of the utilities now have a PBR framework in place that does provide a disincentive, because it provides them with incentives to increase sales based on the rate cap model, so they get more money if they increase the sales. That's the reality right now.

And as far as in this transition period under the rate freeze, it's difficult to evaluate performance. We can certainly see that the amount of funds that have been expended by the utilities on energy efficiency has been much lower than the amount of funds authorized.

Now certainly there have been a lot of other problems with the programs in the past two years due to their various difficulties in the transition, so I can't stand up here and say for sure that it's one incentive or another that's driving them.

But I think that there is certainly evidence that the utilities are not promoting and pursuing energy efficiency to the level that they are authorized to do so in their rate cases.

Now, I think we would very much support the structure with the governance and program management as in table 1 that does not include the utilities in those two roles.

We don't necessarily have any preconceived notion or position on the nonprofit versus the CEC, that's not been an area where we've really delved into the issues deeply.

I think just -- I only had the opportunity today to look at the NRDC proposal. We would not absolutely rule out the possibility of the utilities should be allowed to bid for the program management role, although our preference would be to have them only in the implementation and delivery.

But it appears to me, looking at this proposal, that it really maintains the status quo. And I would disagree somewhat with the characterization that it's just a change in emphasis. This program says -- the NRDC's proposal says utilities will continue to be responsible for the majority of the program management function, including et cetera, et cetera, et cetera.

And apparently it will not be contractually determined with the CEC, but will be based simply on funding, approved funding level with performance incentives set by the CEC.

Basically this is exactly the same structure we have now, except that the CEC will have somehow assumed regulatory oversight responsibility to set incentive levels as is done currently by the PUC.

It seems to be a very different model from a model of going to private contracting agency that has contractual relationships with program managers.

And I have serious concerns about that, though certainly I'd like to look at this proposal and think about it a little more.

I would note another document which appeared today was the summary by Mr. Goldstone. And looking at it it seems to provide a lot of valuable practical suggestions based on previous comments on the nature of the program management function, whether by the CEC or another agency.

And I find that it's especially helpful in its idea that one should not have micromanagement, but one should set very identifiable, clearly articulated standards for evaluation.

This is where TURN believes the CEC or some independent body has to play an essential role in doing the program and market evaluation, box number 4. The utilities or whoever is actually the program manager should not be evaluating their own program. Especially in the context of what I said this morning about benefits of the programs and who shares in the benefits and who pays for the programs.

We believe it is essential that there be clearly articulated goals for these programs, that those be evaluated by the -- whether it's the CEC or some independent body. I think the CEC would be, it would be -- could play a valuable role in performing that program and market evaluation function.

I believe that that concludes my remarks on the administration issue. Thank you very much.

COMMISSIONER LAURIE: Thank you, sir. Questions?

MR. WILSON: Marcel, you may not be the best person to ask this question, but since you're there I'll ask you. Maybe some other people want to answer this, as well.

Regarding the conflict with UDCs and their role as regulated companies, does it make any sense for the DSM activities to move to utility affiliates, does that mitigate any problems?

MR. HAWIGER: Are you talking about the program management or the implementation --

MR. WILSON: Program management.

MR. HAWIGER: Program management.

MR. WILSON: Or implementation.

MR. HAWIGER: I think yes, we would not preclude utility affiliates from bidding for program management function. Primarily because they do not have the built-in regulatory disincentive. They're not providing the delivery service of the energy where through the regulated ratemaking process they have an incentive both to increase their sales, and potentially they might have incentives to provide cross-subsidies.

The affiliate, while there may be issues of cross-subsidies that I would like to reflect on a little more, but they don't have that inherent disincentive for energy efficiency.

Now, certainly the parent company might. There might be some conflicts there since one of their affiliates is the utility. And those may need to be thought through out a little more.

COMMISSIONER LAURIE: Thank you. CALEP,

please.

MR. WALERCZYK: Good afternoon. Yes, my name is Stan Walerczyk with CALEP, California Association of Lighting Energy Professionals.

What I just passed out was by the administrations, and so I really won't talk about that. But I did want to talk about this, I know the CEC is the sponsor of Vision 20/20. And with market transformation I just hope the administration process uses some of the Vision 20/20 principles.

Because energy efficiency has been pushed now in this state for over a decade. And just trying to save money on kilowatts and whatever only gets us so many people. And if you can be a focus on things like increased productivity and increased sales by energy efficient lighting and better quality, I think we have a lot better chance of really transforming the market than just focusing on rebates or SPCs.

And that'll do it for me.

COMMISSIONER LAURIE: Thank you, sir, very much. Questions? Thank you.

Mr. Rufo, please.

MR. RUFO: Mike Rufo from Xenergy. I

just want to make a few points and I guess disjointed is the theme for the day. I've got my comments mixed up from this morning, trying to organize them into the -- separate the funding from the administrative structure questions.

Just a couple quick prefaces for my comments in terms of context for my firm. We're currently involved in both the measurement and evaluation functions in California, market assessment evaluation.

We evaluated the 1998 standard performance contract program, the nonresidential program. We've done a number of impact evaluations over the years.

We've also involved with implementation of programs. We run an energy, residential energy information program for all three IOUs, electric IOUs.

In addition we currently do about $1 million a year in a proprietor research product that's focused on retail energy markets in which we study customer switching behavior in all the restructured markets in the country.

Unfortunately, out activity in California has wound down. We can't seem to get any western region clients interested in this multiclient because the retail markets, at least the mass markets, are fairly dead. And I'll make reference to that in a moment.

Just want to give you that background in case you have any questions about the relationship say, between retail energy markets and the energy efficiency programs.

The first point I wanted to emphasize, and I really don't need to emphasize it very much because it's been brought up a lot more today than I thought it might be, is the contracting process. In fact, that's kind of the thing that brought me here today.

When I look around I don't see a lot of other -- very many private sector firms at the meeting today, and it makes me wonder if they're all smarter than I am in terms of where they're spending their resources.

But, I think one thing I wanted to say is that we really don't have any preferences in terms of these administrative structures. What we, and I think a lot of other firms who aren't here, would say if they were here, and I can't speak for them, is we want a most value procurement process.

Especially when you talk about market transformation, you know, you're really looking for innovation, risk taking, and you need a most value system.

We stopped bidding on CEC jobs about five years ago, and the reason was that we believe that the scoring process on many of the contracts was a mediocrity based system in which you take all the bids over 80 points out of 100, and you go with the low bid.

So the last time we scored a 97 and lost to an 82, we sort of packed up our tent and went elsewhere.

And I know that there's been a lot of talk about that here today. And, in fact, over the years I think that there's been some shifting in that contracting process around these programs, some -- look closer at, but the bottomline is just for us, the litmus test around the administrative structure question is really having a most value procurement process.

And to the extent that you can help, that you can flesh that out as part of this process, or that you can work that into the legislation, I think that that's very important to make folks understand that we're not buying pencils here, we're looking forward, you know, really difficult kinds of innovative strategies to transform markets.

So that's it on the contracting process.

The next point I wanted to make concerns market assessment and evaluation and implementation.

And I just want to emphasize that folks not go down a path where MA&E and implementation are rigidly separated, or too rigidly separated across the board.

That, in fact there are a number of entities, ourselves being one of them, that benefit by doing both MA&E work and implementation. In fact, one activity supports the other.

If you rigidly separate those things I think you lose the complementary of the skill sets that are required to be successful.

Now, clearly, you know, we support the premise that you can't self evaluate. So, for example, the programs that we implement for the California utilities currently we're precluded from evaluating those specific programs.

But we are engaged in a variety of both MA&E and implementation activities. And really if you look at the private sector models of market research, you really -- I think we do need to actually bring the MA&E process closer to the implementation process in terms of bringing a research-based approach to the implementation so that it's more successful.

Now, there are certain areas where you need to separate them completely, but there's a limited population of market actors out there, and as you get into market transformation evaluation you can't go back to one of these market actors over and over and over with different surveys for different functional needs.

So I think just being careful not to overly separate MA&E from implementation is important.

Also, as the case in Wisconsin showed that sometimes rules can be written in ways that create perverse outcomes by being too rigid.

Just wanted to also mention that the work that we've done looking at the California market, both through the nonresidential SPC evaluation and through the multiclient project that I mentioned before, we really haven't seen any real successful bundling of energy efficiency with retail electricity to date anywhere in the country.

And particularly in California in the residential to small commercial markets where switch rates are on the order of 1 percent, there's a real need for some kind of innovation in that market to bring more public benefits to those segments, and others have brought that up today. But I think there's been some failures on the restructuring side with respect to the retail electricity market and one of the prefaces, AB-1890 was the energy efficiency, would be stimulated by the retail providers who bundled those services and captured customers through a greater value added package. That hasn't happened. There area a variety of market barriers I think that are behind that.

Couple quick points and I'll be done. There was a reference, and I think it was not official to a 5 percent funding level potentially as a cap for MA&E. I think if you look at figure 2 and the needs analysis, or the historic analysis that staff did, MA&E was running 10 to 20 percent from 1988 to 1997.

In '98 the figure dropped to something closer to 5 percent, and that seems to be partly just because, you know, studies aren't potentially getting out the door.

But as the utilities moved more toward a market transformation framework there was some discussion of the last two years that doing MA&E for market transformation would be less expensive than doing impact evaluations.

I think that's not the case. It's actually much more complex to do a good program theory based evaluation of a market transformation program. And involves research with many more market actors than the impact evaluation models did.

The impact evaluations tended to be expensive because they had a lot of on-site data collection.

So we would recommend, you know, MA&E funding level more on the order of 10 percent. And that may be, you know, level detail that's not going to be in the report in either case, but I did hear a 5 percent fee earlier and I wanted to respond to that.

The last thing is I think that you should potentially formalize the third-party initiative process more in the administrative structure. So, having the third-party initiative as a box next to the res/nonres and new construction.

Because the problem is if we do go down the path of the model, the $30, 40, 50 million contract to a single entity or three or four entities, that there's going to be a lot of market power that's held by that entity. And then we'll just, you know, it's inevitable that the entity that has the master contract will develop some biases towards trying to maintain all the program functions and all the innovations, themselves.

I think a third party, an issue process is going to be critical to kind of keeping the process vital. So I know it's in there, in the plan, as kind of a sub-bullet item, but I think it's important enough to have it as a separate box with a clear funding bin of its own to really kind of keep the process going in between the big bidding processes for the major, the three or four buckets of the main program administrators.

COMMISSIONER LAURIE: Thank you, sir.

MR. RUFO: That's it.

COMMISSIONER LAURIE: Appreciate your comments very much.

Mr. Nelson.

MR. NELSON: Thank you, Commissioner. Will Nelson, I'm testifying as a private consultant.

I'd like to first make a few general comments with respect to the last hour of discussion. The RFP process for the independent administrator that was attempted by the PUC last year didn't fail because of state procurement rules or the state procurement process, per se.

I believe John Sugar has it right, basically. PUC is not a procuring agency. It's a rates and regulatory agency.

Another major reason it failed is because the PUC was somewhat schizophrenic. They initially envisioned a highly empowered board to conduct a lot of activities for them, and then they changed their mind for a whole lot of reasons, which may be rational or irrational depending on your position.

But that was probably the single overarching reason for the difficulty. But it really wasn't the state procurement process in my estimate.

The state procurement may not always be optimal, but we have public procurement processes in this country that are quite effective, particularly if you compare them with some other countries abroad.

And when you're looking at large dollar contracts and large market impacts, the state procurement processes may, in fact, be precisely what we want for part of the mix.

So I just wanted to say that I'm in substantial agreement with the staff proposal for the agency taking a lead role in this area, for the transfer of general responsibilities and governance responsibilities, and am in general agreement with their multiple administrator approach.

I would also point out that the Public Utility Commission, itself, still concludes the independent administrator market structure or model structure is preferred for energy efficiency administration.

Now, I have proposed, this morning I've

suggested the two tier approach and I agree with Mr. Goldberg who said we really need to be looking to this legislative process, bringing in consensus.

I'm already sensing more difficulty -- I knew there would be difficulty, there's been difficulty for four years, but we need more consensus. I believe the two tier approach to providing for the UDC role through their own rate component, through a restricted set of activities is the best approach. And I'll discuss that in a little bit.

The UDC role, if you're going to pick a top three of what have been our problems in the last four years to getting up and running, we're so far behind other states, it is that. And that needs to be resolved in a fairly clean way. And we can't muddle along for another year or we're going to have considerably more wastage.

So if I could refer you now to the outline on the front page that I submitted today for guiding principles for legislative authorizations, the first point, I strongly recommend that --

COMMISSIONER LAURIE: Mr. Nelson, as you

go through your process, please time your presentation for seven minutes, please.

MR. NELSON: Seven, okay. I had ten, but okay.

COMMISSIONER LAURIE: Well, you had ten.

MR. NELSON: Oh, seven for the rest? Okay. I think I'm in good shape.

I think it's helpful to look ahead to the process the agency will be using, as going down three administrative paths.

One of them is the CEC direct contract management, a so-called master contract or a large contract where they're obtaining the services of other experienced and management savvy organizations to do certain functions.

The second road is the road I call the road to nonexclusive franchises. Which I will describe as a regulatory compact which waives the need for what will probably result in -- you'll probably be having 100, 150 page master contracts.

And I think that's okay. But I don't think that should be the way programs should be run for the next five years or ten years or 20 years.

So I believe that a nonexclusive

franchise method which there is not time to completely explain today, will be a future path in which you use a support payment, support for firms that are out there performing certain services.

And then the third path is the UCD role conducting certain restricted services that are more related to their core mission, such as billing services, peak load management, meter configuration, and possibly some inspection and verification roles.

Now, I'll come back to this three-path approach at the end.

My second recommendation is when you go to the Legislature seek broad authority. Write the language broadly so that you are enabled to do master contracts; you are enabled to draft a charter for a public benefit corporation; you are enabled to draft a charter for a finance authority; you are enabled to make nonexclusive franchise grants.

Then as you go down the three paths initially in the year or two ahead, if one of those really catches fire, and it has substantial money and policy implications, you say to the Legislature, we'll be back with the details on the charter for the finance authority, the PBC, or franchise granting. Although at the outset I think you should gain pilot authority for the franchising concept.

Third, the reporting and accountability of UDCs, and just for the sake of framing this in your mind, let's say that one-fifth of today's budget goes to this UDC tract, program expenditures, and four-fifths flow through CEC trust accounts.

The IOUs will still make their filings, applications and reports to the PUC, and the public utility boards will still have the oversight responsibility for the services in that area.

Again, I'll say, as I said this morning, the legislation should provide for certain reporting coordination with the CEC for the IOU programs and the public, we're well past the time when public board utilities should be required to make formal filings and reporting to a state agency on the public moneys they're spending.

Fourth point. If you find it infeasible to do a full transfer of all programs from existing investor-owned utilities, you should still do a full contracting authority transfer should still occur as of 1/1/02. In other words, if the UDCs are going to conduct any of the programs or projects or given territories for markets, they should have to execute a master contract with the Commission for that period. And I would limit the UDCs to one one- or two-year period extension. That would be at the discretion of the CEC whether that was on a competitive bid context, or a sole source negotiated basis.

Generally I think you should -- you're doing this. I commend you for planning program phasing and development in two-year frames, generally, as you move them from one form to another form.

I frankly believe if there was a political will, as one party said today, that all programs could be transferred early in 2002. I see no reason why this agency can't conduct standard performance contract programs. We don't even have them for the residential sector at this point.

I see no reason why you can't conduct voucher centers throughout the state for the different customer sectors. I see no reason why you can't contract rebate agents. Some of the rebate agents might be existing agents.

I don't see great barriers towards this agency moving ahead. I see this agency as the one of choice to move these programs forward.

And just to close I still have a deep concern regarding the public utility board roles. I do believe the CEC may well be crossing a Rubicon of sorts, if it moves these rate components into the state fiscal system and starts expending on clearly public areas like support of codes.

I don't see how you can set up walls, for instance, if you have an internet procurement agent, an agent doing both procurement using internet services. Of course, customers in public utility territories are going to make use of those.

So I see that as highly problematic. I commend you to take courage and tackle that issue. and bring the public utilities in with the IOUs and everyone to get a consensus bill from the Legislature.

MR. ABELSON: Very good, thank you, Mr. Nelson very much.

MS. ten HOPE: Can I just ask one question?

MR. ABELSON: Quickly, please.

MS. ten HOPE: Can you explain the nonexclusive franchise, what that is?

MR. NELSON: Let me illustrate with a brief example. Let's say in the residential customer sector California was divided into eight territories. Not based necessarily on the existing UDC service territory lines.

And the CEC said to companies out there, you need to provide five target services. We have five measures or types of services that we want provided in order for us to grant you a nonexclusive franchise. You will enter into an agreement with us to do that, but it won't be a contract, as such.

This is just an example. The criteria might be that the companies would have to have at least three of those five measures or services in in-house capability, and they could be permitted to out-source two of the others. One of those might be bulk procurement, services procurement of energy efficiency appliances, just as an example.

Another one might be auditing or site

assessment functions, bill analysis functions.

They're awarded geographical nonexclusive franchises. In other words, if someone else wants to offer audit services of those type of services, they're not restricted from doing so.

The hook for the company to bid on this is they get a support payment for every customer that they can demonstrate that they've provided XYZ, AB service to in a given time period. It's very auditable. I believe it's a useful direction to experiment with.

MS. ten HOPE: Thank you.

COMMISSIONER LAURIE: Thank you very much, Mr. Nelson.

MR. NELSON: Thank you.

COMMISSIONER LAURIE: I'm sorry, Mr. Berman.

MR. BERMAN: Thank you, Commissioners and Staff. I'm Mark Berman with Davis Energy Group.

I have a concern and my concern is we're talking about the details of administrative structures and measurement and evaluation, et cetera, et cetera. My concern is that we might be rearranging and then rearranging again the deck chairs on the Titanic.

I think we have to keep in focus the number one priority, it's not the only, but the number one priority is to extend the public goods charges. Because without that none of this discussion amounts to anything.

And I think just about everybody in the room would agree that good things are being done with the public goods funds. They should be extended. More energy efficient technology is there to be developed, and much energy efficiency technology is there and is under-utilized.

So we're talking about a good thing that we're doing. We want to continue doing it. But I think Lenny Goldberg said it very well, and others have agreed with him, the best assurance of continuation is some sort of consensus.

We need to be able to go to the Legislature pretty much arm-in-arm and say, good things have been done, here ar the results. We need to continue this for the State of California.

And I think there have been some proposals, one in particular today that is a good foundation for a consensus. And I would suggest that your job now is to look for that consensus.

The current utility structure and the current utility programs are producing results. If we're not able to say that, our cause is lost. And I think we can truthfully say that they are producing results.

If you'd like to see some of those results, I invite you to come to a public forum at the Stockton Energy Center October 21 from 9:00 to 12:00 when our firm will present the results of a third-party program that we've been running for the last two cooling seasons called the home cooling program.

And I think we have some good results to show. And it's just one example. And if you don't think so, come and tell us, that's fine, too.

Perhaps these results are not being produced as efficiently as they could be. Many people seem to want change, and therein lies a dilemma. This is a complicated business, it is a big task, it's not clear what structure would work better.

It is clear that if poor decisions are made we could take something that's working and turn it into something that doesn't work, and have a disaster on our hands. So there's some risk to making changes, and I think you feel that strongly.

And therefore I think Peter Miller's proposal is an excellent one. Because what it says is let's build on the momentum that we've got now. Let's take advantage of the utility experience and the utility knowhow that is producing results today, and let's also create a mechanism to try at least one, if not more, new approaches.

For example, the Energy Commission directly contracting with program administrators or an administrator for one or two or five programs. And let's see how it works.

Let's inject, and I think the Legislature would like this, as a businessman I know I do, let's inject some competition into this system. So, yes, the utilities move forward, and at the same time the Energy Commission moves forward in a slightly different way.

And maybe there's the latitude for a third way to be attempted. And I think that's already been started in a sense, and it's the third-party proposals.

There are a lot of folks out there that are capable of running small to medium-sized programs and have a lot of good ideas and we should tap into them as the utilities have started to do, but it's not been done a lot.

And then with time and with experience if we find that there are better ways, the Energy Commission is there in a position, as the governance body, to make a shift from 90 percent utilities 10 percent other, to 70/30 or whatever is appropriate.

One specific suggestion, and this has been echoed by others -- I guess I'm the echoer, but the third party initiative. I did not see it on table 2, which was Energy Commission sets policy overall budget for nonprofit administrators. It seemed to have fallen out of the principal duties section there.

I do think that that is a good mechanism for injecting competition, getting new ideas in. I think the third-party initiative needs to be in here someplace.

Of course, having taken advantage of it, and I believe successfully, I might be biased.

But I don't think so. I think when you talk with others we're not the only ones that think that's a good idea.

So, in sum, I think it's time to look for consensus, it's time to build a consensus. We've got a great story to tell, and I think we need to make sure that that rings true to the Legislature, and that we take care of task number one and get these programs extended. And also do it in a way that gives some life to it so we can -- more life to it, more flexibility, so we can evolve with time without having to go back to the Legislature and ask for permission to switch from this mechanism to that.

Thank you.

COMMISSIONER LAURIE: Thank you, Mr. Berman, very much.

Now, I'd ask you to do that as a sidebar, Mr. Abelson. Thank you.

Mr. Ely, please.

MR. ELY: Thank you, Mr. Commissioner.

I have again some sort of high level thoughts. Earlier this morning I spoke to you as an economist. This afternoon very briefly for a change I thought I would start as an engineer.

When an engineer designs a system to accomplish something, say an amplifier, a chemical system to make gasoline, he designs it to go flat out, to make as much amplification, as much gasoline as he possibly can. He immediately comes in with the feedback system based on some measurements.

So that when he ends up building the system that produces gasoline or amplification or almost anything, including growth in children, if we can divert, there's really a design, a go-for-it, and at the same time there is a measurement and feedback that is absolutely paramount in the process.

When you're designing a program as an engineer, you're designing a process or even a biological system, the amplification, the push, the push to get the programs out, the excellent work done here by Mr. Sloss in setting up a structure to get all this done, is the easy part.

The hard part is to design the measurement and the feedback. And it is absolutely critical to make any of those systems, whether it's biological, chemical engineering, in fact also economic, electronic, any kind of system to know whether or not you're doing a good job, you have to have a measurement part of it, and a feedback part of it.

The feedback really comes in two parts. One, it has to have enough control to be able to modulate the system, to modulate whatever it is you're trying to do, and it has to be based on some sort of measurements.

As this morning, I'm again Johnny One Note on somehow somewhere you've got to have some measuring. But I think my emphasis this afternoon, I'd like to, since we're talking about administrative structures, is to focus on the little box on the left there, that independent review.

That looks exactly like an engineering diagram. It's the feedback channel, if you will, in the system. That's where the design effort should go.

Anybody can criticize, the utilities, the regulatory process, the CEC, the CEC's process, it is very hard to sit as we are now and ask how do we design a system to correct, to self correct, to know when we're wrong.

It's very easy to sit and say I know how to run a program, I think I know how to design a program that will run. It's a lot more sort of difficult on a personal level to say I'm really imperfect and we really screw up a lot. And what we need is some other feedback type mechanism, some other entity, an agency, a Galbraithian countervailing power, if I could slip over into economics, that will force us back into track.

In your design, Messrs. Commissioners, in your design of a system I hope you will focus far more on the correcting feedback agency and how you can set that up to be politically viable, because that's what's going to make you strong.

It is the lion that makes the elephant strong. It's the lion that makes the wildebeest strong. Is the wolf that makes the deer strong. That's what you need. You need, if you're going to design, if you want to be a strong program, if you want to be a strong agency, then you should focus much more on the corrective mechanisms, the corrective elements than on the original.

On a separate note, since I am here, and also have been the beneficiary of third parties, I'd like to pick up on another odd things.

The MA&E process and the contractual

process produces kind of a tautology wherein if you do a program and have an MA&E process that evaluates it successfully you're complete. There's no reason for any new ideas.

And just as in an engineering system you often add what's called boltsman noise or outside noise to a system to keep it preventing from finding local maximums instead of global maximums.

So be it here. You want a third-party process that makes everybody uncomfortable, that keeps pushing us off of our little, the MA&E process that we're perfect. We've done it right. There are no other solutions. We have to prevent that kind of stagnation.

And so just as you have to have a strong feedback mechanism to design an effective process, you also have to build into it noise, opportunities for new ideas, opportunities for new programs, the dirty messy research experimental end of it.

Thank you very much.

COMMISSIONER LAURIE: Thank you, Mr. Ely. Thank you, sir.

Any additional input? Yes, Mr. Chouteau. And we appreciate your written comments.

MR. CHOUTEAU: Thank you. Since we did submit a proposal, I thought I might just comment today that our proposal was essentially to have an existing regulatory structure with the Energy Commission in governance, and the Energy Commission with the role in evaluation. But the utilities continuing to provide the programs.

And what I wanted to say is I agree with the comments earlier that at some point we need to converge, I think, to be successful going forward.

And I just want to express my openness to some of the new ideas that Peter Miller has introduced that are different than the ones that we introduced, and my openness to explore that with the Commission and with Peter.

Certainly our proposals are not identical and having the CEC and the utilities both in the role of program managers is quite different, but I just wanted to express that I'm open to that.

The second thing is it's been brought up today that the overall concern about utilities having a kind of sell-versus-save conflict. And this has come up time and time again in this proceeding.

And it's very clear that there's at least a perception that that's a problem. And all I can offer is that in the years that I've been managing this function for the utility, as we looked at the question of whether to stay in this business, I felt like I've been in the role of selling these programs. And I happen to believe these programs are a good thing.

I felt like my toughest audience has been internal to the company, my own management. And at least that, for me, was the toughest test when we went forward in the restructured environment and the Commission, the Public Utility Commission, put a lot of pressure on the utility to get out of this business.

They stated very clear their intent in the beginning to have an independent administrator, not that the utility couldn't bid, but that they were going to put this out for independent bid.

The question came up internally, you know, when I came before my management, you know, should we be in this business. And that's where I would expect the sell-versus-save argument to come up. I would expect if there is a conflict for the utility, you know, to put pressure on me and say, well, why should we do these energy efficiency programs if we want to sell.

But that wasn't the issue. In fact, when we looked at it, it was clear that these programs were going to go forward. That whether we did them or somebody else did them, you would save kilowatt hours, and sales would be affected.

So, really the choice the utility had was whether to participate or not. Not whether to stop this from happening. Because this will happen.

And, in fact, when we looked at it and discussed it internally, it made sense from our customers' point of view for these programs to go forward. Even if it meant reduced sales, it meant the right kind of sales for customers.

And as anybody who has customers knows, I mean that's what determines your success, is whether the customer is satisfied with the product.

So when we looked at it there wasn't really a choice about sell-versus-save. There was a small concern that we would do it better than other parties, so you would actually save a little more. But that --

(Laughter.)

MR. CHOUTEAU: -- you know, that was pushed aside when people looked at the one, the customer argument, and two, the potential this had as a business. This was a good business to be in.

And that's how we answered it internally, you know, that's where we are today, and that's why I get confused when this issue keeps resurfacing.

I'm not confused that it's a perception, because it's clear that it is, I mean, you know, people don't bring it up if it wasn't a perception that this is a problem. But I have to say from my view, having managed these programs and dealt with the issues internally to the company, this isn't the big issue.

Thanks.

COMMISSIONER PERNELL: I have a question. First of all, thank you for your written comments, and I was just waiting to talk to someone from the utilities. But you've answered most of those.

I just have one additional question, and that goes to Mr. Goldberg's contention that Davis is putting a lot in and not getting anything out.

So my question to you is whether or not as this process goes forward, and if the utilities are still involved, whether or not you would be doing some additional reaching out to those local agencies or councils or supervisors to see that they get some benefit from this public goods charge that they're being charged.

MR. CHOUTEAU: I see our role as effective administrators in reaching out and finding the best way to accomplish these programs, given the overall guidance we get from the governance body.

And in the past it was very simple resource acquisition, kilowatt hours, very easy to measure. So we went out and found, given the other guidance of equity, we found the best -- the easiest way to get a kilowatt hour as we could, the best way to accomplish the goals.

So, in the future I would expect us to continue to perform that way. Given a certain goal we'll find the best way to do it. And if a goal is -- if it's clear that it's easier to achieve the goal by combining with local entities, or finding ways for local entities to participate in larger numbers, then I would see us doing that.

And, in fact, we've begun that kind of exploration already under the current programs. I don't think in the current structure we have an inherent interest in shutting out people who have good ideas.

I think, as any organization, we have a certain momentum, and so people with new ideas need ways to get our attention. But I think we've started to work on several processes that make that happen. And I think we can get better at it. I think there's no question that we can be better at it.

Like any large organization, you know, like the Commission, itself, we have things that make us slower. We have our own institutional memory to deal with and our own prejudices, but I think our intent as an administrator is to find the most effective way to deliver the programs, given the goals that are set for us. And I think we can do that.

COMMISSIONER PERNELL: Thank you, Chris.

MR. MESSENGER: Can I ask him just one question?

COMMISSIONER LAURIE: Is it particularly

germane, because you have minus two minutes to make the staff summary, Mr. Messenger.

MR. MESSENGER: I can do it outside.

COMMISSIONER LAURIE: Make it quick.

Mr. Sugar, -- I'm sorry, does anybody else who are not subject to our own time constraints wish to comment on the administrative structure?

Thank you. Mr. Sugar, could you take two minutes and indicate next steps, please?

MR. SUGAR: First, I'd like to thank everyone who has come and spoken. This is very helpful to us. If you have written comments, please get them in by the end of the week.

We are going to take this material, go back to our warren of cubicles and look it over and try to incorporate the comments and the thinking in what we're doing.

If you can get comments to us by the end of the week we'd very much appreciate it. We'll try not to ignore material that comes in later to staff, but it becomes more and more difficult for us to incorporate and to digest the material as it gets closer to our deadline.

We anticipate having a draft out very

early next month for review. And that will be heard at a Committee hearing in mid November.

If you have questions please feel free to give me a call. If you have suggestions, please feel free to give me a call. If there are questions or issues on public involvement, please speak with either Maxine Botti or Don Kazama. They've orchestrated this and I'd like to thank them again for an excellent effort.

MS. ten HOPE: Is the next hearing date already set so we can make sure people know when that is.

MR. SUGAR: It's November 16th is going to be the hearing.

COMMISSIONER LAURIE: Now the draft document will reflect the policy decisions made by the Committee, and the Committee consists of Commissioner Pernell and myself, with input.

Formal Commission action, of course, will not take place until subsequent to the publication of the draft. You will all get a shot at the draft document. And that's right, there will be another Committee hearing on the actual draft document.

The Committee has not, as yet,

considered the discussion as presented today. It will. And our thoughts will be reflected in the draft document.

Commissioner Pernell, did you have any closing comments at this moment, sir?

COMMISSIONER PERNELL: I just want to thank everybody for a very long productive day.

COMMISSIONER LAURIE: And thank you, Commissioner. Anybody else?

MR. MESSENGER: I just want to say --

(Laughter.)

COMMISSIONER LAURIE: Yes, Mike.

MR. MESSENGER: I think there's one important point that's been raised that I would hope that we could talk with the Committee about, and maybe get feedback to the rest of the audience as quickly as possible.

At least two people have come forward and said we think that we should try to develop a consensus proposal. And if you think that's an admirable goal, or if you want us to pursue that as opposed to continuing our current mode, which is just analyzing and giving you a recommendation.

It would be useful to me, at least, to know that within the next couple of weeks, because

I do think it's possible for us to do that.

COMMISSIONER LAURIE: Well, you know, Commissioner Pernell and I are the new kids on the block in this issue. Most of you have been around for years, and there ain't been no consensus that I've seen.

(Laughter.)

COMMISSIONER LAURIE: There's a lot of money at stake, to the extent that people are happy by the decision, I think that's great. The Legislature will be making some decisions. We are not inclined to be making recommendations to the Legislature that we know will not be acceptable.

I don't know exactly what that means.

(Laughter.)

COMMISSIONER LAURIE: But we're not as dumb as we look. Is that what I mean?

Okay, we understand. And certainly to the extent that any conversation can take place between affected parties, between affected parties and staff, I encourage that. No problem. Okay.

And thank you very much.

(Whereupon, at 4:07 p.m., the workshop was adjourned.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Workshop, nor in any way interested in the outcome of said Workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of October, 1999.

VALORIE PHILLIPS